



Montana Legislative History

Chapter: 446 Session L: 2009

Checklist of Bill History

Bill Number:	History and Final Status Sheet	x
	Introduced Bill	X
	Fiscal Note	X
	Third Reading Bill	X
	Final Version of Bill	X

House

Committee: Local
Government

Hearing Date(s):
[2/19/09](#)
[2/20/09](#) (Executive
Action)

Senate

Committee: Local Government

Hearing Date(s):
[3/11/09](#)
[3/27/09](#) (Exec. Action)

Conference Committee

Hearing Date(s):
[4/15/09](#)
[4/16/09 AM](#)

Conference Committee Report:
[4/17/09](#)

Compiler Notes

Compiled by: sg

Date: 9/17/24

Notes:

Bill Explorer - HB 486: Generally revise land use and planning laws

Summary

Sponsoredby: [MacLaren, Gary](#)
(R) HD 89

Progress		
Status	Date	Passed
Introduced	02/07/09	✓
Passed (H) Committee	02/21/09	✓
Passed House	02/25/09	✓
Passed (S) Committee	03/28/09	✓
Passed Senate	04/02/09	✓
To Governor	04/29/09	✓

Draft #	LC0666
Amendment(s)	Yes
Chapter #	446
Current Status	Chapter Number Assigned
Co-Sponsor(s)	None
Drafter	Kolman, Joe

Requester	MacLaren, Gary
Fiscal Note	No
Preintroduction Required	No
Category	General Bills
Subject(s)	Planning and Development, Property,
Transmittal Date	02/26/09
Return Date	04/02/09

Sections Affected	Effective Date	Qualifier
All Sections	05/05/2009	

Bill Explorer - HB 486: Generally revise land use and planning laws

Status

Date	Action	Committee	Yes Votes	No Votes
05/05/09	Chapter Number Assigned			
05/05/09	(H) Signed by Governor			
04/29/09	(H) Transmitted to Governor			
04/29/09	(S) Signed by President			
04/23/09	(H) Signed by Speaker			
04/22/09	(C) Printed - New Version Available			
04/22/09	(H) Returned from Enrolling			
04/22/09	(C) Printed - New Version Available			
04/21/09	(H) Sent to Enrolling			
04/21/09	(S) 3rd Reading Conference Committee Report Adopted		35	15
04/21/09	(H) 3rd Reading Conference Committee Report Adopted		70	30
04/21/09	(S) Scheduled for 3rd Reading			
04/20/09	(S) 2nd Reading Conference Committee Report Adopted		32	18
04/20/09	(H) 2nd Reading Conference Committee Report Adopted		67	31

Date	Action	Committee	Yes Votes	No Votes
04/20/09	(S) Scheduled for 2nd Reading			
04/20/09	(H) Scheduled for 2nd Reading			
04/17/09	(H) Conference Committee Report Received			
04/17/09	(S) Conference Committee Report Received			
04/16/09	(S) Hearing	(S) Conference		
04/16/09	(S) Hearing	(S) Conference		
04/15/09	(S) Hearing	(S) Conference		
04/07/09	(S) Conference Committee Appointed			
04/06/09	(H) Conference Committee Appointed			
04/06/09	(H) 2nd Reading Senate Amendments Not Concurred		93	5
04/06/09	(H) Scheduled for 2nd Reading			
04/02/09	(S) Returned to House with Amendments			
04/02/09	(S) 3rd Reading Concurred		43	6
04/02/09	(S) Scheduled for 3rd Reading			
03/31/09	(C) Printed - New Version Available			
03/31/09	(S) 2nd Reading Concurred as Amended on Voice Vote		48	2
03/31/09	(S) 2nd Reading Motion to Amend Carried on Voice Vote		48	2
03/31/09	(S) Scheduled for 2nd Reading			

Date	Action	Committee	Yes Votes	No Votes
03/30/09	(C) Printed - New Version Available			
03/28/09	(S) Committee Report--Bill Concurred as Amended	(S) Local Government		
03/28/09	(S) Committee Executive Action--Bill Concurred as Amended	(S) Local Government	9	0
03/11/09	(S) Hearing	(S) Local Government		
03/02/09	(S) Referred to Committee	(S) Local Government		
03/02/09	(S) First Reading			
02/25/09	(H) Transmitted to Senate			
02/25/09	(H) 3rd Reading Passed		95	5
02/25/09	(H) Scheduled for 3rd Reading			
02/24/09	(H) 2nd Reading Passed		90	9
02/24/09	(H) Scheduled for 2nd Reading			
02/21/09	(C) Printed - New Version Available			
02/21/09	(H) Committee Report--Bill Passed as Amended	(H) Local Government		
02/21/09	(H) Committee Executive Action--Bill Passed as Amended	(H) Local Government	18	0
02/19/09	(H) Hearing	(H) Local Government		
02/07/09	(H) Referred to Committee	(H) Local Government		
02/07/09	(H) First Reading			

Date	Action	Committee	Yes Votes	No Votes
02/06/09	(C) Introduced Bill Text Available Electronically			
02/06/09	(H) Introduced			
02/05/09	(C) Draft Delivered to Requester			
02/05/09	(C) Draft Ready for Delivery			
02/04/09	(C) Draft in Assembly/Executive Director Review			
02/04/09	(C) Draft in Final Drafter Review			
02/04/09	(C) Bill Draft Text Available Electronically			
02/04/09	(C) Draft in Input/Proofing			
02/04/09	(C) Draft to Drafter - Edit Review [JLN]			
02/04/09	(C) Draft in Edit			
02/03/09	(C) Draft in Legal Review			
02/03/09	(C) Draft Taken Off Hold			
01/14/09	(C) Draft On Hold			
01/07/09	(C) Draft to Requester for Review			
12/31/08	(C) Draft to Requester for Review			
12/30/08	(C) Draft Taken Off Hold			
11/20/08	(C) Draft On Hold			
10/24/08	(C) Draft Request Received			

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Bill Explorer - HB 486: Generally revise land use and planning laws

Fiscal

Date	Status
No matching results found	
Fiscal Documents	
No matching results found	
Fiscal Rebuttals	
No matching results found	

Amendments

Amendment	Condensed Version
No Amendments found	

Documents And Links

Previous Versions

[HB0486_x.pdf](#)

[HB0486_5.pdf](#)

[HB0486_4.pdf](#)

[HB0486_3.pdf](#)

[HB0486_2.pdf](#)

[HB0486_1.pdf](#)

Other

None

~~under the contested case procedures of Title 2, chapter 4, part 6, as provided in subsections (1)(b) and (1)(c).~~

(4) The board shall issue a final decision within 4 months from the close of the hearing on the merits or, if no hearing is held, within 3 months from the date that briefing by the parties is complete unless the applicant and the party other than the applicant agree in writing to an extension of time.

~~(4)(5) A customer fiscal impact analysis required by 69-2-216 may not be used as the basis of an appeal of a final decision by the department."~~

Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].

(2) [Section 7] is intended to be codified as an integral part of Title 75, chapter 5, part 6, and the provisions of Title 75, chapter 5, part 6, apply to [section 7].

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Section 12. Applicability. [This act] applies to judicial and board of environmental review hearing and appeal proceedings initiated on or after [the effective date of this act].

Approved May 5, 2009

CHAPTER NO. 446

[HB 486]

AN ACT GENERALLY REVISING LAND USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH CERTAIN ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; ESTABLISHING WHEN A PARK DEDICATION MAY BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-23-301, MCA, is amended to read:

“70-23-301. Contents of declaration. A declaration ~~shall~~ *must* contain:

(1) a description of the land, whether leased or in fee simple, on which the building is *located* or is to be located;

(2) the name by which the property ~~shall will~~ be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein in the common elements~~;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such the~~ person which ~~shall~~ *must* be within the county in which the property is located;

(8) *an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and*

(9) any other details regarding the property that the person executing the declaration considers desirable.”

Section 2. Section 76-1-601, MCA, is amended to read:

“76-1-601. Growth policy — contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) *sand and gravel resources; and*

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

- (i) land use;
 - (ii) population;
 - (iii) housing needs;
 - (iv) economic conditions;
 - (v) local services;
 - (vi) natural resources; and
 - (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
- (i) a timetable for implementing the growth policy;
 - (ii) a list of conditions that will lead to a revision of the growth policy; and
 - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
- (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
 - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
- (h) a statement explaining how the governing bodies will:
- (i) define the criteria in 76-3-608(3)(a); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
- (i) delineate the wildland-urban interface; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
 - (C) adequate water supply for fire protection.
- (4) A growth policy may:
- (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, *sand and gravel resources*, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ *real property owners in the proposed district*, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ *6 months* after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ *real property owners* representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 4. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners.~~ The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

Section 5. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof of the development districts and the official maps and including procedure for appeals from decisions made under the authority of such the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such these resolutions.

(2) *Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."*

Section 6. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts — regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, *and for the purposes provided in 76-2-201*, the board of county commissioners may by resolution ~~establish zoning districts and zoning regulations for all or part of the jurisdictional area~~ *establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.*

(b) An action challenging the creation of a zoning district *or adoption of zoning regulations* must be commenced within ~~5 years~~ *6 months* after the date of the order by the board of county commissioners creating the district *or adopting the regulations*.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

~~(3)(2)~~ In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)(3)~~ All regulations must be uniform for each class or kind of buildings throughout a district, but the *The* regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family dwelling for a single household~~, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing

and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5) Nothing contained in this~~ This section may *not* be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 7. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2); and~~

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic~~, and other dangers;

~~(iii)(ii)~~ promote public health, *public safety*, and general welfare; *and*

~~(iv) provide adequate light and air;~~

~~(v) prevent the overcrowding of land;~~

~~(vi) avoid undue concentration of population; and~~

~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

~~(2) Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

(a) *reasonable provision of adequate light and air;*

(b) *the effect on motorized and nonmotorized transportation systems;*

(c) *compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;*

(d) the character of the district and its peculiar suitability for particular uses; and

(e) ~~with a view to~~ conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of ~~the municipality within the jurisdictional area nearby municipalities."~~

Section 8. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries.

The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must:~~

(a) state:

~~(a)(i)~~ the boundaries of the proposed district;

~~(b)(ii)~~ the general character of the proposed zoning regulations;

- (e)(iii) the time and place of the public hearing;
- (e)(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (b) *be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and*
- (c) *be published once a week for 2 weeks in a newspaper of general circulation within the county.*

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ *real property owners* within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ *real property owners* representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

Section 9. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) ~~The Subject to subsection (3), the board of county commissioners may adopt establish an interim zoning map district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:~~

- (a) the purpose of the interim zoning ~~map district~~ *map district* or *interim* regulation is to classify and regulate those uses and related matters that constitute the emergency; and
- (b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) ~~An interim~~ A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. ~~The Subject to subsection (3), the~~ board of county commissioners may extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) *The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:*

(a) *Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:*

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) *At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.*

(c) *After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."*

Section 10. Section 76-2-210, MCA, is amended to read:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case~~ If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of adopted under this part,~~ the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent ~~such~~ the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; ~~to~~

(b) restrain, correct, or abate ~~such~~ a violation; ~~to~~

(c) prevent the occupancy of ~~such~~ the building, structure, or land; or ~~to~~

(d) prevent any illegal act, conduct, business, or use in or ~~about such~~ near the premises.

(2) *For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain voluntary compliance at least 30 days before filing a*

complaint for a violation of this part that is subject to the penalties under 76-2-211.

(2)(3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.”

Section 11. Section 76-2-304, MCA, is amended to read:

“76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and

(b) designed to:

(i) ~~lessen congestion in the streets;~~

(ii)(i) secure safety from fire, ~~panic,~~ and other dangers;

(iii)(ii) promote public health, public safety, and the general welfare; and

(iv) ~~provide adequate light and air;~~

(v) ~~prevent the overcrowding of land;~~

(vi) ~~avoid undue concentration of population; and~~

(vii)(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ *In the adoption of zoning regulations, the municipal governing body shall consider:*

(a) *reasonable provision of adequate light and air;*

(b) *the effect on motorized and nonmotorized transportation systems;*

(c) *promotion of compatible urban growth;*

(d) the character of the district and its peculiar suitability for particular uses; and

(e) ~~with a view to~~ conserving the value of buildings and encouraging the most appropriate use of land throughout the ~~municipality jurisdictional area.~~

(3) ~~Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999.”~~

Section 12. Section 76-3-207, MCA, is amended to read:

“76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations — exceptions — fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner’s immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, *the relocation of common boundaries and the aggregation of lots; and*

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, *redesign, or rearrangement* of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and before~~ an amended plat ~~must~~ *may* be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions review under parts 5 and 6 of this chapter.~~

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division *or aggregation* of land to determine whether or not the requirements of this chapter apply to the division *or aggregation* and may establish reasonable fees, not to exceed \$200, for the examination."

Section 13. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations — contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-210~~, 76-3-509, ~~or~~ 76-3-609, *or* 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single

entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions

provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the *authorized* agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the *authorized* agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;

(r) *requires that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.*

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.”

Section 14. Section 76-3-506, MCA, is amended to read:

“76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, *after a public hearing on the variance request before the governing body or its designated agent or agency*, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) *A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section.”*

Section 15. Section 76-3-507, MCA, is amended to read:

“76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ *subsections (2) and (4)*, the governing body shall require the subdivider to complete required improvements within the *proposed* subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) *The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats.*

Section 16. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) *All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required.*"

Section 17. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities,

local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements *within and to the proposed subdivision* for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~

~~(i) addresses the criteria in subsection (3)(a);~~

~~(ii) evaluates the impact of development on the criteria in subsection (3)(a);~~

~~(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

~~(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~

~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

~~(i) apply to the entire area subject to the exemption; and~~

~~(ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

(7)(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 18. Section 76-3-609, MCA, is amended to read:

“76-3-609. Review procedure for minor subdivisions — determination of sufficiency of application — governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~

~~(iii)(ii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) *The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).*

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) *except as provided in subsection (2)(d), the provisions of 76-3-608(3); and*

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed

the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 19. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ *Except as provided in 76-3-507, after* the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 20. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements — written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, *in accordance with the time limit established in 76-3-504(1)(r)*, prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

(1) includes information regarding the appeal process for the denial or imposition of conditions;

(2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

Section 21. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(d) a subdivision in which only one additional parcel is created; or

(e) *except as provided in subsection (8), a first minor subdivision from a tract of record as described in 76-3-609(2).*

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

~~(8) A local governing body may, at its discretion, require a park dedication for a minor subdivision. A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.~~

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-609(3); or

(ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 22. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations — actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ *from the date of the written* decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 23. Repealer. Section 76-3-210, MCA, is repealed.

Section 24. Effective date. [This act] is effective on passage and approval.

Section 25. Applicability. (1) [Sections 13, 20, and 22], concerning adoption of regulations and time references in the regulations, apply upon adoption of regulations under [section 13] or on May 1, 2010, whichever occurs first.

(2) [Section 2] applies upon adoption of a new growth policy or upon revision of an existing growth policy.

(3) [Section 21] applies upon revision of subdivision regulations or on December 31, 2010, whichever occurs first.

Approved May 5, 2009

HOUSE BILL NO. 486
INTRODUCED BY G. MACLAREN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ANNEXATION AND SUBDIVISION LAWS; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; AMENDING SECTIONS 7-2-4303, 7-2-4503, 7-2-4608, 70-23-301, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-608, 76-3-609, 76-3-610, 76-3-620, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-2-4303, MCA, is amended to read:

"7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d); or when an annexation is in accordance with a growth policy adopted by the municipality, land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land."

Section 2. Section 7-2-4503, MCA, is amended to read:

"7-2-4503. Restrictions on annexation power. ~~Land shall~~ Except when annexation is in accordance with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose;
or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment ~~or any purpose incident thereto.~~"

Section 3. Section 7-2-4608, MCA, is amended to read:

"7-2-4608. Restrictions on annexation power. (1) ~~No territory~~ Territory which, at the time ~~such a~~ petition for ~~such a~~ proposed annexation is presented to ~~such a~~ council or legislative body, forms any part of any incorporated city or town ~~shall~~ may not be annexed under the provisions of this part.

(2) ~~No~~ Except as provided in 7-2-4503, a parcel of land which, at the time ~~such a~~ petition for ~~such a~~ proposed annexation is presented to ~~such a~~ council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose ~~or any purpose incident thereto~~ ~~shall~~ may not be annexed under the provisions of this part."

Section 4. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration ~~shall~~ must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property ~~shall~~ will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein~~ in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such the~~ the person which ~~shall~~ must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

Section 5. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ 60 days after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 6. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's

members must be paid from a levy on the taxable value of all taxable property within the district."

Section 7. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof of the development districts and the official maps and including procedure for appeals from decisions made under the authority of such the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

Section 8. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 5 years 60 days after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

~~(3)~~(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning

district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)(3)~~ All regulations must be uniform for each class or kind of buildings throughout a district, but the The regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family~~ dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5)~~ ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 9. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;

~~(iii)(ii)~~ promote public health, public safety, and general welfare; and

~~(iv) provide adequate light and air;~~

——— ~~(v) prevent the overcrowding of land;~~

——— ~~(vi) avoid undue concentration of population; and~~

~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area nearby municipalities."

Section 10. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;

- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

Section 11. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and
- (b) designed to:
 - (i) ~~lessen congestion in the streets;~~
 - (ii) ~~(i)~~ secure safety from fire, ~~panic~~, and other dangers;
 - (iii) ~~(ii)~~ promote public health, public safety, and the general welfare; and
 - (iv) ~~provide adequate light and air;~~
 - ~~—— (v) prevent the overcrowding of land;~~
 - ~~—— (vi) avoid undue concentration of population; and~~
 - ~~—— (vii) (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.~~

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;

- (b) the effect on motorized and nonmotorized transportation systems;
 - (c) promotion of compatible urban growth;
 - (d) the character of the district and its peculiar suitability for particular uses; and
 - (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.
- ~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

Section 12. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

- (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;
- (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
- (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;
- (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; ~~and~~
- (e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and before~~ an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 13. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-240~~, 76-3-509, ~~or 76-3-609~~, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to

provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision

on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604-;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 days following a decision by the governing body to deny or conditionally approve a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster

development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 14. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 15. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the

purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

Section 16. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

- ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~
 - ~~—— (i) addresses the criteria in subsection (3)(a);~~
 - ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~
 - ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~
 - ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~
- ~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~
 - ~~—— (i) apply to the entire area subject to the exemption; and~~
 - ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 17. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed

as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

- (i) the requirement to prepare an environmental assessment;
- ~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~
- ~~(iii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

- (i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and
- (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 18. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 19. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;
- (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and
- (4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before

the final plat may be approved."

Section 20. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

- (a) the subdivider;
- (b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- (c) the county commissioners of the county where the subdivision is proposed; and
- (d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;
- (ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and
- (iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

NEW SECTION. **Section 21. Repealer.** Section 76-3-210, MCA, is repealed.

NEW SECTION. **Section 22. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 486

INTRODUCED BY MACLAREN, REINHART, ZINKE, BRUEGGEMAN, LAIBLE, HAWKS, GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ANNEXATION AND SUBDIVISION LAWS; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; AMENDING SECTIONS ~~7-2-4303~~, ~~7-2-4503~~, ~~7-2-4608~~, 70-23-301, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-608, 76-3-609, 76-3-610, 76-3-620, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 7-2-4303, MCA, is amended to read:~~

~~"7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), or when an annexation is in accordance with a growth policy adopted by the municipality, land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land."~~

~~Section 2. Section 7-2-4503, MCA, is amended to read:~~

~~"7-2-4503. Restrictions on annexation power. Land shall Except when annexation is in accordance with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is used:~~

~~(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose;~~
~~or~~

~~(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto."~~

~~Section 3. Section 7-2-4608, MCA, is amended to read:~~

~~"7-2-4608. Restrictions on annexation power. (1) No territory Territory which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, forms any part of any incorporated city or town shall may not be annexed under the provisions of this part.~~

~~(2) No Except as provided in 7-2-4503, a parcel of land which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall may not be annexed under the provisions of this part."~~

Section 1. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration ~~shall~~ must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property ~~shall~~ will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein~~ in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ the person which ~~shall~~ must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

Section 2. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ 60 days after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 3. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's

members must be paid from a levy on the taxable value of all taxable property within the district."

Section 4. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof of the development districts and the official maps and including procedure for appeals from decisions made under the authority of such the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

Section 5. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within 5 years 60 days after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

~~(3)~~(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning

district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)(3)~~ All regulations must be uniform for each class or kind of buildings throughout a district, but the The regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family~~ dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5)~~ ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 6. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;

~~(iii)(ii)~~ promote public health, public safety, and general welfare; and

~~(iv) provide adequate light and air;~~

——— ~~(v) prevent the overcrowding of land;~~

——— ~~(vi) avoid undue concentration of population; and~~

~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area nearby municipalities."

Section 7. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) the time and place of the public hearing;
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;

- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

Section 8. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and
- (b) designed to:
 - (i) ~~lessen congestion in the streets;~~
 - (ii)(i) secure safety from fire, ~~panic~~, and other dangers;
 - (iii)(ii) promote public health, public safety, and the general welfare; and
 - (iv) ~~provide adequate light and air;~~
 - ~~_____ (v) prevent the overcrowding of land;~~
 - ~~_____ (vi) avoid undue concentration of population; and~~
 - ~~_____ (vii)(iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.~~

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;

- (b) the effect on motorized and nonmotorized transportation systems;
 - (c) promotion of compatible urban growth;
 - (d) the character of the district and its peculiar suitability for particular uses; and
 - (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.
- ~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

Section 9. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

- (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;
- (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
- (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;
- (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; ~~and~~
- (e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and~~ before an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 10. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-240~~, 76-3-509, ~~or 76-3-609~~, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to

provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision

on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604-;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 WORKING days following a decision by the governing body to deny or conditionally approve a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster

development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 11. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 12. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the

purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

Section 13. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

- ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~
 - ~~—— (i) addresses the criteria in subsection (3)(a);~~
 - ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~
 - ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~
 - ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~
- ~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~
 - ~~—— (i) apply to the entire area subject to the exemption; and~~
 - ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 14. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed

as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

- (i) the requirement to prepare an environmental assessment;
- ~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~
- ~~(iii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

- (i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and
- (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 15. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 16. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;
- (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and
- (4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before

the final plat may be approved."

Section 17. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

NEW SECTION. **Section 18. Repealer.** Section 76-3-210, MCA, is repealed.

NEW SECTION. **Section 19. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 486

INTRODUCED BY MACLAREN, REINHART, ZINKE, BRUEGGEMAN, LAIBLE, HAWKS, GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~ANNEXATION AND SUBDIVISION LAND~~ USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; PROVIDING PENALTIES FOR VIOLATION OF CERTAIN ZONING REGULATIONS; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; PROVIDING THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS ~~7-2-4303, 7-2-4503, 7-2-4608,~~ 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-113, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

———— ~~Section 1. Section 7-2-4303, MCA, is amended to read:~~

———— ~~"7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), or when an annexation is in accordance with a growth policy adopted by the municipality, land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land."~~

———— ~~Section 2. Section 7-2-4503, MCA, is amended to read:~~

———— ~~"7-2-4503. Restrictions on annexation power. Land shall Except when annexation is in accordance~~

~~with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is used:~~

~~—— (1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or~~

~~—— (2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto."~~

~~—— **Section 3.** Section 7-2-4608, MCA, is amended to read:~~

~~—— **"7-2-4608. Restrictions on annexation power.** (1) No territory Territory which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, forms any part of any incorporated city or town shall may not be annexed under the provisions of this part.~~

~~—— (2) No Except as provided in 7-2-4503, a parcel of land which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall may not be annexed under the provisions of this part."~~

Section 1. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration ~~shall~~ must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property ~~shall~~ will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein~~ in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ the person which ~~shall~~ must be within the county in which the property

is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

SECTION 2. SECTION 76-1-601, MCA, IS AMENDED TO READ:

"76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) sand and gravel resources; and

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

- (vi) natural resources; and
- (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
 - (i) a timetable for implementing the growth policy;
 - (ii) a list of conditions that will lead to a revision of the growth policy; and
 - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
 - (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
 - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
- (h) a statement explaining how the governing bodies will:
 - (i) define the criteria in 76-3-608(3)(a); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
 - (i) delineate the wildland-urban interface; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
 - (C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and

future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ ~~60 days~~ 6 MONTHS after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 4. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

Section 5. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part ~~thereof~~ of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity ~~thereof~~ of the development districts and the official maps and including procedure for appeals from decisions made under the authority of ~~such~~ the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is ~~hereby~~ authorized to adopt ~~such~~ these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

NEW SECTION. SECTION 6. VIOLATIONS AND PENALTIES. A VIOLATION OF THIS PART OR OF A RESOLUTION ADOPTED PURSUANT TO THIS PART IS A MISDEMEANOR AND IS PUNISHABLE BY A FINE OF UP TO \$500 OR BY IMPRISONMENT

IN THE COUNTY JAIL FOR A TERM NOT EXCEEDING 6 MONTHS, OR BOTH. THE VIOLATION IS AN ABSOLUTE LIABILITY OFFENSE AS PROVIDED FOR IN 45-2-104.

SECTION 7. SECTION 76-2-113, MCA, IS AMENDED TO READ:

"76-2-113. Enforcement of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2)(b) restrain, correct, or abate a violation;

(3)(c) prevent the occupancy of a building, structure, or land; or

(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [section 6]."

Section 8. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within ~~5 years~~ 60 days 6 MONTHS after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

(3)(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning

district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)(3) All regulations must be uniform for each class or kind of buildings throughout a district, but the~~ The regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family~~ dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5) Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 9. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;

~~(iii)(ii)~~ promote public health, public safety, and general welfare; and

~~(iv) provide adequate light and air;~~

——— ~~(v) prevent the overcrowding of land;~~

——— ~~(vi) avoid undue concentration of population; and~~

~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area nearby municipalities."

Section 10. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must:~~

- (A) state:
 - ~~(a)~~(i) the boundaries of the proposed district;
 - ~~(b)~~(ii) the general character of the proposed zoning regulations;
 - ~~(c)~~(iii) the time and place of the public hearing;
 - ~~(d)~~(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(B) BE POSTED NOT LESS THAN 45 DAYS BEFORE THE PUBLIC HEARING IN AT LEAST FIVE PUBLIC PLACES WITHIN THE PROPOSED DISTRICT; AND

(C) BE PUBLISHED ONCE A WEEK FOR 2 WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and

to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

SECTION 11. SECTION 76-2-206, MCA, IS AMENDED TO READ:

"76-2-206. Interim zoning map or regulation. (1) ~~The~~ Subject to subsection (3), the board of county commissioners may ~~adopt~~ establish an interim zoning ~~map district~~ or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning ~~map district~~ or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or

to zoning regulations pursuant to this part.

(2) ~~An interim~~ A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. ~~The Subject to subsection (3)(c), the~~ board of county commissioners may extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (i) the boundaries of the proposed district;
 - (ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;
 - (iii) the general character of the proposed interim zoning district or interim regulation;
 - (iv) the time and place of the public hearing; and
 - (v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.
- (b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.
- (c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

SECTION 12. SECTION 76-2-210, MCA, IS AMENDED TO READ:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case~~ If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of adopted under this part,~~ the county, in addition to other remedies, may institute any appropriate action or proceedings to:

- (a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to
- (b) restrain, correct, or abate ~~such a~~ violation; to
- (c) prevent the occupancy of ~~such the~~ building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or ~~about such~~ near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)(3)~~ The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

Section 13. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and
- (b) designed to:
 - ~~(i) lessen congestion in the streets;~~
 - ~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;
 - ~~(iii)(ii)~~ promote public health, public safety, and the general welfare; and
 - ~~(iv) provide adequate light and air;~~
 - ~~(v) prevent the overcrowding of land;~~
 - ~~(vi) avoid undue concentration of population; and~~
 - ~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

~~(2) Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.

~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

Section 14. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, THE relocation of common boundaries ~~and the aggregation of lots; and~~

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and before~~ an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the

land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 15. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-210~~, 76-3-509, ~~or 76-3-609~~, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

- (i) the design and arrangement of lots, streets, and roads;
- (ii) grading and drainage;
- (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

- (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

- (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

- (iv) the location and installation of public utilities;

- (h) provide procedures for the administration of the park and open-space requirements of this chapter;

- (i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

- (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

- (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

- (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- (iii) reserve and sever all surface water rights from the land;

- (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

- (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an

irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade

the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604-;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 WORKING days following a decision by the governing body to ~~deny or conditionally~~ approve, CONDITIONALLY APPROVE, OR DENY a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 16. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 17. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

SECTION 18. SECTION 76-3-510, MCA, IS AMENDED TO READ:

"76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider

to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

Section 19. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably

minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

- ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~
 - ~~—— (i) addresses the criteria in subsection (3)(a);~~
 - ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~
 - ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~
 - ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~
- ~~—— (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~
 - ~~—— (i) apply to the entire area subject to the exemption; and~~
 - ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 20. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that

tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

- (i) the requirement to prepare an environmental assessment;
- ~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~
- ~~(iii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

- (i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and
- (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of

subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 21. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 22. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;
- (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision;

and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

SECTION 23. SECTION 76-3-621, MCA, IS AMENDED TO READ:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

- (a) land proposed for subdivision into parcels larger than 5 acres;
- (b) subdivision into parcels that are all nonresidential;
- (c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; ~~or~~
- (d) a subdivision in which only one additional parcel is created; or
- (e) a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must

be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local governing body may, at its discretion, require a park dedication for a subsequent minor subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 24. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

NEW SECTION. Section 25. Repealer. Section 76-3-210, MCA, is repealed.

NEW SECTION. SECTION 26. CODIFICATION INSTRUCTION. [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 1, APPLY TO [SECTION 6].

NEW SECTION. Section 27. Effective date. [This act] is effective on passage and approval.

NEW SECTION. SECTION 28. APPLICABILITY. [SECTIONS 15, 22, AND 24], CONCERNING ADOPTION OF REGULATIONS AND TIME REFERENCES IN THE REGULATIONS, APPLY UPON ADOPTION OF REGULATIONS UNDER [SECTION 15] OR ON MAY 1, 2010, WHICHEVER OCCURS FIRST.

- END -

HOUSE BILL NO. 486

INTRODUCED BY MACLAREN, REINHART, ZINKE, BRUEGGEMAN, LAIBLE, HAWKS, GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~ANNEXATION AND SUBDIVISION LAND~~ USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; PROVIDING PENALTIES FOR VIOLATION OF CERTAIN ZONING REGULATIONS; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; PROVIDING THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS ~~7-2-4303, 7-2-4503, 7-2-4608,~~ 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-113, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

———— ~~Section 1. Section 7-2-4303, MCA, is amended to read:~~

———— ~~"7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), or when an annexation is in accordance with a growth policy adopted by the municipality, land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land."~~

———— ~~Section 2. Section 7-2-4503, MCA, is amended to read:~~

———— ~~"7-2-4503. Restrictions on annexation power. Land shall Except when annexation is in accordance~~

~~with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is used:~~

~~—— (1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or~~

~~—— (2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto."~~

~~—— **Section 3.** Section 7-2-4608, MCA, is amended to read:~~

~~—— **"7-2-4608. Restrictions on annexation power.** (1) No territory Territory which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, forms any part of any incorporated city or town shall may not be annexed under the provisions of this part.~~

~~—— (2) No Except as provided in 7-2-4503, a parcel of land which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall may not be annexed under the provisions of this part."~~

Section 1. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration ~~shall~~ must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property ~~shall~~ will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner ~~therein~~ in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ the person which ~~shall~~ must be within the county in which the property

is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

SECTION 2. SECTION 76-1-601, MCA, IS AMENDED TO READ:

"76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) sand and gravel resources; and

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

- (vi) natural resources; and
- (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
 - (i) a timetable for implementing the growth policy;
 - (ii) a list of conditions that will lead to a revision of the growth policy; and
 - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
 - (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
 - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
- (h) a statement explaining how the governing bodies will:
 - (i) define the criteria in 76-3-608(3)(a); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
 - (i) delineate the wildland-urban interface; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and
 - (C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and

future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ ~~60 days~~ 6 MONTHS after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 4. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

Section 5. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part ~~thereof~~ of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity ~~thereof~~ of the development districts and the official maps and including procedure for appeals from decisions made under the authority of ~~such~~ the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is ~~hereby~~ authorized to adopt ~~such~~ these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

NEW SECTION. SECTION 6. VIOLATIONS AND PENALTIES. A VIOLATION OF THIS PART OR OF A RESOLUTION ADOPTED PURSUANT TO THIS PART IS A MISDEMEANOR AND IS PUNISHABLE BY A FINE OF UP TO \$500 OR BY IMPRISONMENT

IN THE COUNTY JAIL FOR A TERM NOT EXCEEDING 6 MONTHS, OR BOTH. THE VIOLATION IS AN ABSOLUTE LIABILITY OFFENSE AS PROVIDED FOR IN 45-2-104.

SECTION 7. SECTION 76-2-113, MCA, IS AMENDED TO READ:

"76-2-113. Enforcement of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2)(b) restrain, correct, or abate a violation;

(3)(c) prevent the occupancy of a building, structure, or land; or

(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [section 6]."

Section 8. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within ~~5 years~~ 60 days 6 MONTHS after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

(3)(2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning

district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)(3)~~ All regulations must be uniform for each class or kind of buildings throughout a district, but the The regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family~~ dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5)~~ ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 9. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;

~~(iii)(ii)~~ promote public health, public safety, and general welfare; and

~~(iv) provide adequate light and air;~~

——— ~~(v) prevent the overcrowding of land;~~

——— ~~(vi) avoid undue concentration of population; and~~

~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area nearby municipalities."

Section 10. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must:~~

- (A) state:
 - ~~(a)~~(i) the boundaries of the proposed district;
 - ~~(b)~~(ii) the general character of the proposed zoning regulations;
 - ~~(c)~~(iii) the time and place of the public hearing;
 - ~~(d)~~(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(B) BE POSTED NOT LESS THAN 45 DAYS BEFORE THE PUBLIC HEARING IN AT LEAST FIVE PUBLIC PLACES WITHIN THE PROPOSED DISTRICT; AND

(C) BE PUBLISHED ONCE A WEEK FOR 2 WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and

to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

SECTION 11. SECTION 76-2-206, MCA, IS AMENDED TO READ:

"76-2-206. Interim zoning map or regulation. (1) ~~The~~ Subject to subsection (3), the board of county commissioners may ~~adopt~~ establish an interim zoning ~~map district~~ or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning ~~map district~~ or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or

to zoning regulations pursuant to this part.

(2) ~~An interim~~ A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. ~~The Subject to subsection (3)(c), the~~ board of county commissioners may extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (i) the boundaries of the proposed district;
 - (ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;
 - (iii) the general character of the proposed interim zoning district or interim regulation;
 - (iv) the time and place of the public hearing; and
 - (v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.
- (b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.
- (c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

SECTION 12. SECTION 76-2-210, MCA, IS AMENDED TO READ:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case~~ If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of~~ adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:

- (a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to
- (b) restrain, correct, or abate ~~such a~~ violation; to
- (c) prevent the occupancy of ~~such the~~ building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or ~~about such~~ near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)(3)~~ The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

Section 13. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and
- (b) designed to:
 - ~~(i) lessen congestion in the streets;~~
 - ~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;
 - ~~(iii)(ii)~~ promote public health, public safety, and the general welfare; and
 - ~~(iv) provide adequate light and air;~~
 - ~~(v) prevent the overcrowding of land;~~
 - ~~(vi) avoid undue concentration of population; and~~
 - ~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

~~(2) Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.

~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

Section 14. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, THE relocation of common boundaries ~~and the aggregation of lots; and~~

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and before~~ an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the

land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 15. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-240~~, 76-3-509, ~~or 76-3-609~~, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

- (i) the design and arrangement of lots, streets, and roads;
- (ii) grading and drainage;
- (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

- (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

- (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

- (iv) the location and installation of public utilities;

- (h) provide procedures for the administration of the park and open-space requirements of this chapter;

- (i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

- (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

- (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

- (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- (iii) reserve and sever all surface water rights from the land;

- (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

- (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an

irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade

the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604-;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 WORKING days following a decision by the governing body to ~~deny or conditionally~~ approve, CONDITIONALLY APPROVE, OR DENY a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 16. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 17. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

SECTION 18. SECTION 76-3-510, MCA, IS AMENDED TO READ:

"76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider

to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

Section 19. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably

minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

- ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~
 - ~~—— (i) addresses the criteria in subsection (3)(a);~~
 - ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~
 - ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~
 - ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~
- ~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~
 - ~~—— (i) apply to the entire area subject to the exemption; and~~
 - ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 20. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that

tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~

~~(iii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of

subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 21. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 22. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;
- (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision;

and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

SECTION 23. SECTION 76-3-621, MCA, IS AMENDED TO READ:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

- (a) land proposed for subdivision into parcels larger than 5 acres;
- (b) subdivision into parcels that are all nonresidential;
- (c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; ~~or~~
- (d) a subdivision in which only one additional parcel is created; or
- (e) a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must

be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local governing body may, at its discretion, require a park dedication for a subsequent minor subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 24. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

NEW SECTION. Section 25. Repealer. Section 76-3-210, MCA, is repealed.

NEW SECTION. SECTION 26. CODIFICATION INSTRUCTION. [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 1, APPLY TO [SECTION 6].

NEW SECTION. Section 27. Effective date. [This act] is effective on passage and approval.

NEW SECTION. SECTION 28. APPLICABILITY. [SECTIONS 15, 22, AND 24], CONCERNING ADOPTION OF REGULATIONS AND TIME REFERENCES IN THE REGULATIONS, APPLY UPON ADOPTION OF REGULATIONS UNDER [SECTION 15] OR ON MAY 1, 2010, WHICHEVER OCCURS FIRST.

- END -

HOUSE BILL NO. 486

INTRODUCED BY MACLAREN, REINHART, ZINKE, BRUEGGEMAN, LAIBLE, HAWKS, GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~ANNEXATION AND SUBDIVISION LAND~~ USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; ~~PROVIDING PENALTIES FOR VIOLATION OF CERTAIN ZONING REGULATIONS~~; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH CERTAIN ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; ~~PROVIDING THAT A PARK DEDICATION MAY NOT BE ESTABLISHING WHEN A PARK DEDICATION MAY BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD~~; AMENDING SECTIONS ~~7-2-4303, 7-2-4503, 7-2-4608,~~ 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, ~~76-2-113~~, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

———— **Section 1.** Section 7-2-4303, MCA, is amended to read:

———— **"7-2-4303. Restrictions on annexation power.** Except as provided in 7-2-4314(1)(d), ~~or when an annexation is in accordance with a growth policy adopted by the municipality, land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land.~~"

———— **Section 2.** Section 7-2-4503, MCA, is amended to read:

~~"7-2-4503. Restrictions on annexation power. Land shall Except when annexation is in accordance with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is used:~~

~~—— (1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose;~~
~~or~~

~~—— (2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto."~~

~~—— **Section 3.** Section 7-2-4608, MCA, is amended to read:~~

~~—— **"7-2-4608. Restrictions on annexation power.** (1) No territory Territory which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, forms any part of any incorporated city or town shall may not be annexed under the provisions of this part.~~

~~—— (2) No Except as provided in 7-2-4503, a parcel of land which, at the time such a petition for such a proposed annexation is presented to such a council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall may not be annexed under the provisions of this part.~~

Section 1. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration shall must contain:

(1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;

(2) the name by which the property shall will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner therein in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the

residence or place of business of ~~such~~ the person which ~~shall~~ must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

SECTION 2. SECTION 76-1-601, MCA, IS AMENDED TO READ:

"76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) sand and gravel resources; and

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

- (v) local services;
- (vi) natural resources; and
- (vii) other elements proposed by the planning board and adopted by the governing bodies;
- (d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);
- (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;
- (f) an implementation strategy that includes:
 - (i) a timetable for implementing the growth policy;
 - (ii) a list of conditions that will lead to a revision of the growth policy; and
 - (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;
- (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:
 - (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;
 - (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;
- (h) a statement explaining how the governing bodies will:
 - (i) define the criteria in 76-3-608(3)(a); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);
- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:
 - (i) delineate the wildland-urban interface; and
 - (ii) adopt regulations requiring:
 - (A) defensible space around structures;
 - (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

(C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ 60 days 6 MONTHS after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 4. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

Section 5. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part ~~thereof~~ of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity ~~thereof~~ of the development districts and the official maps and including procedure for appeals from decisions made under the authority of ~~such the~~ regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is ~~hereby~~ authorized to adopt ~~such these~~ resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

~~NEW SECTION. SECTION 6. VIOLATIONS AND PENALTIES. A VIOLATION OF THIS PART OR OF A RESOLUTION~~

~~ADOPTED PURSUANT TO THIS PART IS A MISDEMEANOR AND IS PUNISHABLE BY A FINE OF UP TO \$500 OR BY IMPRISONMENT IN THE COUNTY JAIL FOR A TERM NOT EXCEEDING 6 MONTHS, OR BOTH. THE VIOLATION IS AN ABSOLUTE LIABILITY OFFENSE AS PROVIDED FOR IN 45-2-104.~~

~~SECTION 7. SECTION 76-2-113, MCA, IS AMENDED TO READ:~~

~~"76-2-113. Enforcement of zoning provisions. (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:~~

~~(1)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;~~

~~(2)(b) restrain, correct, or abate a violation;~~

~~(3)(c) prevent the occupancy of a building, structure, or land; or~~

~~(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.~~

~~(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [section 6]."~~

Section 6. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution ~~establish zoning districts and zoning regulations for all or part of the jurisdictional area~~ establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within ~~5 years~~ 60 days ~~6 MONTHS~~ after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

~~(3)(2)~~ In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4)~~ Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

~~(5)(3)~~ All regulations must be uniform for each class or kind of buildings throughout a district, but the The regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family~~ dwelling for a single household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5)~~ ~~Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 7. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic~~, and other dangers;

~~(iii)(ii)~~ promote public health, public safety, and general welfare; and

~~(iv) provide adequate light and air;~~

~~(v) prevent the overcrowding of land;~~

~~(vi) avoid undue concentration of population; and~~

~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

~~(2) Zoning regulations must be made with reasonable consideration, among other things, to~~ In the

adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;

(d) the character of the district and its peculiar suitability for particular uses; and
(e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of ~~the municipality within the jurisdictional area~~ nearby municipalities."

Section 8. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must:~~

- (A) state:
 - ~~(a)~~(i) the boundaries of the proposed district;
 - ~~(b)~~(ii) the general character of the proposed zoning regulations;
 - ~~(c)~~(iii) the time and place of the public hearing;
 - ~~(d)~~(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(B) BE POSTED NOT LESS THAN 45 DAYS BEFORE THE PUBLIC HEARING IN AT LEAST FIVE PUBLIC PLACES, INCLUDING BUT NOT LIMITED TO PUBLIC BUILDINGS AND ADJACENT TO PUBLIC RIGHTS-OF-WAY, WITHIN THE PROPOSED DISTRICT; AND

(C) BE PUBLISHED ONCE A WEEK FOR 2 WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning

board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

- (a) the boundaries of the proposed district;
- (b) the general character of the proposed zoning regulations;
- (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;
- (d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

SECTION 9. SECTION 76-2-206, MCA, IS AMENDED TO READ:

"76-2-206. Interim zoning map or regulation. (1) ~~The~~ Subject to subsection (3), the board of county commissioners may ~~adopt~~ establish an interim zoning ~~map district~~ or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

- (a) the purpose of the interim zoning ~~map district~~ or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and
- (b) the county:
 - (i) is conducting or in good faith intends to conduct studies within a reasonable time; or
 - (ii) has held or is holding a hearing for the purpose of considering any of the following:
 - (A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) ~~An interim A~~ resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. ~~The Subject to subsection (3)(c) (3), the~~ board of county commissioners may extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county.

The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

SECTION 10. SECTION 76-2-210, MCA, IS AMENDED TO READ:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case~~ If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of adopted under this part,~~ the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent such the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; ~~to~~

(b) restrain, correct, or abate ~~such a~~ violation; ~~to~~

(c) prevent the occupancy of ~~such the~~ building, structure, or land; or ~~to~~

(d) prevent any illegal act, conduct, business, or use in or ~~about such~~ near the premises.

(2) The FOR THE PURPOSES OF ENFORCING SUBSECTIONS (1)(A) THROUGH (1)(C), THE county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)(3)~~ The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

Section 11. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

(a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and

(b) designed to:

~~(i) lessen congestion in the streets;~~

~~(ii)(i)~~ secure safety from fire, ~~panic~~, and other dangers;

~~(iii)(ii)~~ promote public health, public safety, and the general welfare; and

~~(iv) provide adequate light and air;~~

~~—— (v) prevent the overcrowding of land;~~

~~—— (vi) avoid undue concentration of population; and~~

~~—— (vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to In the adoption of zoning regulations, the municipal governing body shall consider:

(a) reasonable provision of adequate light and air;

(b) the effect on motorized and nonmotorized transportation systems;

(c) promotion of compatible urban growth;

(d) the character of the district and its peculiar suitability for particular uses; and

(e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.

~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master~~

~~plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

Section 12. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, THE relocation of common boundaries ~~and the aggregation of lots; and~~

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and before~~ an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural

purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 13. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-240~~, 76-3-509, ~~or 76-3-609~~, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address

information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 WORKING days following a decision by the governing body to ~~deny or conditionally~~ approve, CONDITIONALLY APPROVE, OR DENY a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 14. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing

body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 15. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

SECTION 16. SECTION 76-3-510, MCA, IS AMENDED TO READ:

"76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

Section 17. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the

required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

- ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~
 - ~~—— (i) addresses the criteria in subsection (3)(a);~~
 - ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~
 - ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~
 - ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~
- ~~(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~
 - ~~—— (i) apply to the entire area subject to the exemption; and~~
 - ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 18. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

- (i) the requirement to prepare an environmental assessment;
- ~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~
- ~~(iii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

- (i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and
- (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and

76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 19. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 20. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;

(3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and

(4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

SECTION 21. SECTION 76-3-621, MCA, IS AMENDED TO READ:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

- (3) A park dedication may not be required for:
- (a) land proposed for subdivision into parcels larger than 5 acres;
 - (b) subdivision into parcels that are all nonresidential;
 - (c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; ~~or~~
 - (d) a subdivision in which only one additional parcel is created; or
 - (e) EXCEPT AS PROVIDED IN SUBSECTION (8), a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational

uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

~~(8) A local governing body may, at its discretion, require a park dedication for a subsequent minor subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.~~

~~(8) (A) A LOCAL GOVERNING BODY MAY, AT ITS DISCRETION, REQUIRE A PARK DEDICATION FOR:~~

~~(I) A SUBSEQUENT MINOR SUBDIVISION AS DESCRIBED IN 76-3-609(3); OR~~

~~(II) A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD AS DESCRIBED IN 76-3-609(2) IF:~~

~~(A) THE SUBDIVISION PLAT INDICATES DEVELOPMENT OF CONDOMINIUMS OR OTHER MULTIFAMILY HOUSING;~~

~~(B) ZONING REGULATIONS PERMIT CONDOMINIUMS OR OTHER MULTIFAMILY HOUSING; OR~~

~~(C) ANY OF THE LOTS ARE LOCATED WITHIN THE BOUNDARIES OF A MUNICIPALITY.~~

~~(B) A LOCAL GOVERNING BODY THAT CHOOSES TO REQUIRE A PARK DEDICATION SHALL SPECIFY IN REGULATIONS THE CIRCUMSTANCES UNDER WHICH A PARK DEDICATION WILL BE REQUIRED.~~

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 22. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or

a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

NEW SECTION. **Section 23. Repealer.** Section 76-3-210, MCA, is repealed.

~~NEW SECTION. SECTION 26. CODIFICATION INSTRUCTION. [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 1, APPLY TO [SECTION 6].~~

NEW SECTION. **Section 24. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. SECTION 25. APPLICABILITY. (1) [SECTIONS 15, 22, AND 24 13, 20, AND 22], CONCERNING ADOPTION OF REGULATIONS AND TIME REFERENCES IN THE REGULATIONS, APPLY UPON ADOPTION OF REGULATIONS

UNDER [SECTION ~~45~~ 13] OR ON MAY 1, 2010, WHICHEVER OCCURS FIRST.

(2) [SECTION 2] APPLIES UPON ADOPTION OF A NEW GROWTH POLICY OR UPON REVISION OF AN EXISTING GROWTH POLICY.

(3) [SECTION 21] APPLIES UPON REVISION OF SUBDIVISION REGULATIONS OR ON DECEMBER 31, 2010, WHICHEVER OCCURS FIRST.

- END -



AN ACT GENERALLY REVISING LAND USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH CERTAIN ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; ESTABLISHING WHEN A PARK DEDICATION MAY BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-23-301, MCA, is amended to read:

"70-23-301. Contents of declaration. A declaration ~~shall~~ must contain:

- (1) a description of the land, whether leased or in fee simple, on which the building is located or is to be located;
- (2) the name by which the property ~~shall~~ will be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;
- (3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;
- (4) a description of the general common elements and the percentage of the interest of each unit owner

therein in the common elements;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ the person which ~~shall~~ must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

Section 2. Section 76-1-601, MCA, is amended to read:

"76-1-601. Growth policy -- contents. (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) sand and gravel resources; and

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing

bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and

(j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

(i) delineate the wildland-urban interface; and

(ii) adopt regulations requiring:

(A) defensible space around structures;

(B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

(C) adequate water supply for fire protection.

(4) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) establish an infrastructure plan that, at a minimum, includes:

(i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

(ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

(iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

(iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

(v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

(vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access

areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 3. Section 76-2-101, MCA, is amended to read:

"76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40

acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ 6 months after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

Section 4. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

Section 5. Section 76-2-107, MCA, is amended to read:

"76-2-107. Preparation of resolutions and other materials. (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part ~~thereof~~ of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official

maps, and the preservation of the integrity ~~thereof~~ of the development districts and the official maps and including procedure for appeals from decisions made under the authority of ~~such~~ the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is ~~hereby~~ authorized to adopt ~~such~~ these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

Section 6. Section 76-2-202, MCA, is amended to read:

"76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution ~~establish zoning districts and zoning regulations for all or part of the jurisdictional area~~ establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within ~~5 years~~ 6 months after the date of the order by the board of county commissioners creating the district or adopting the regulations.

~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.~~

~~(3)~~ (2) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.~~

~~(5)~~ (3) All regulations must be uniform for each class or kind of buildings throughout a district, but the The

regulations in one district may differ from those in other districts.

~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family dwelling for a single household~~, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

~~(7)(5) Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 7. Section 76-2-203, MCA, is amended to read:

"76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and
- (b) designed to:
 - ~~(i) lessen congestion in the streets;~~
 - ~~(ii)(i)~~ secure safety from fire, ~~panic,~~ and other dangers;
 - ~~(iii)(ii)~~ promote public health, public safety, and general welfare; and
 - ~~(iv) provide adequate light and air;~~
 - ~~—— (v) prevent the overcrowding of land;~~
 - ~~—— (vi) avoid undue concentration of population; and~~
 - ~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and

~~(e) with a view to~~ conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of ~~the municipality within the jurisdictional area~~ nearby municipalities."

Section 8. Section 76-2-205, MCA, is amended to read:

"76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must:~~

(a) state:

~~(a)~~(i) the boundaries of the proposed district;

~~(b)~~(ii) the general character of the proposed zoning regulations;

~~(c)~~(iii) the time and place of the public hearing;

~~(d)~~(iv) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(b) be posted not less than 45 days before the public hearing in at least five public places, including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year."

Section 9. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) ~~The Subject to subsection (3), the~~ board of county commissioners may ~~adopt~~ establish an interim zoning ~~map district~~ or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning ~~map district~~ or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) ~~An interim A~~ resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. ~~The Subject to subsection (3), the~~ board of county commissioners may extend

the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county.

The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

Section 10. Section 76-2-210, MCA, is amended to read:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case~~ If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of adopted under this part,~~ the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent ~~such~~ the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to

(b) restrain, correct, or abate ~~such a~~ violation; to

(c) prevent the occupancy of ~~such~~ the building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or ~~about~~ near the premises.

(2) For the purposes of enforcing subsections (1)(a) through (1)(c), the county shall attempt to obtain

voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)(3)~~ The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

Section 11. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and
- (b) designed to:
 - ~~(i) lessen congestion in the streets;~~
 - ~~(ii)(i)~~ secure safety from fire, ~~panic~~, and other dangers;
 - ~~(iii)(ii)~~ promote public health, public safety, and the general welfare; and
 - ~~(iv) provide adequate light and air;~~
 - ~~(v) prevent the overcrowding of land;~~
 - ~~(vi) avoid undue concentration of population; and~~
 - ~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the municipal governing body shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) promotion of compatible urban growth;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality jurisdictional area.

~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

Section 12. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries ~~and the aggregation of lots; and~~

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body ~~and~~ before an amended plat ~~must~~ may be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the

county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed \$200, for the examination."

Section 13. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in ~~76-3-240~~, 76-3-509, ~~or~~ 76-3-609, or 76-3-616, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year

frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604-;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 14. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

Section 15. Section 76-3-507, MCA, is amended to read:

"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements. (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable

security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

Section 16. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

Section 17. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:~~

- ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~
 - ~~—— (i) addresses the criteria in subsection (3)(a);~~
 - ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~
 - ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~
 - ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and~~
- ~~—— (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~
 - ~~—— (i) apply to the entire area subject to the exemption; and~~
 - ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

~~(7)~~(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce."

Section 18. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~

~~(iii)(ii)~~ the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

(f) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

Section 19. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of application and preliminary plat. (1) Upon approving or conditionally approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

Section 20. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604 and

76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;
- (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and
- (4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

Section 21. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

- (3) A park dedication may not be required for:

- (a) land proposed for subdivision into parcels larger than 5 acres;
- (b) subdivision into parcels that are all nonresidential;
- (c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; ~~or~~
- (d) a subdivision in which only one additional parcel is created; or
- (e) except as provided in subsection (8), a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or

natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

~~(8) A local governing body may, at its discretion, require a park dedication for a minor subdivision. A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.~~

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-609(3); or

(ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

- (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and
- (b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 22. Section 76-3-625, MCA, is amended to read:

"76-3-625. Violations -- actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

- (a) the subdivider;
- (b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
- (c) the county commissioners of the county where the subdivision is proposed; and
- (d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;
- (ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and
- (iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

Section 23. Repealer. Section 76-3-210, MCA, is repealed.

Section 24. Effective date. [This act] is effective on passage and approval.

Section 25. Applicability. (1) [Sections 13, 20, and 22], concerning adoption of regulations and time references in the regulations, apply upon adoption of regulations under [section 13] or on May 1, 2010, whichever occurs first.

(2) [Section 2] applies upon adoption of a new growth policy or upon revision of an existing growth policy.

(3) [Section 21] applies upon revision of subdivision regulations or on December 31, 2010, whichever occurs first.

- END -

I hereby certify that the within bill,
HB 0486, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 486

INTRODUCED BY MACLAREN, REINHART, ZINKE, BRUEGGEMAN, LAIBLE, HAWKS, GILLAN

AN ACT GENERALLY REVISING LAND USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND ZONING DISTRICT UNDER A CERTAIN CONDITION; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH CERTAIN ZONING REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE ALLOWING BONDING OR OTHER REASONABLE SECURITY; ESTABLISHING WHEN A PARK DEDICATION MAY BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING SECTIONS 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510, 76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: Chairwoman Elsie Arntzen, on February 19, 2009 at
3:00 P.M., in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Elsie Arntzen, Chairwoman (R)
Rep. Betsy Hands, Vice Chairwoman (D)
Rep. Gary MacLaren, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Gerald Bennett (R)
Rep. Tom Berry (R)
Rep. Robyn Driscoll (D)
Rep. Bob Ebinger (D)
Rep. Wanda Grinde (D)
Rep. Robin Hamilton (D)
Rep. Pat Ingraham (R)
Rep. Michael More (R)
Rep. Scott Reichner (R)
Rep. Michele Reinhart (D)
Rep. Diane Sands (D)
Rep. Wayne Stahl (R)
Rep. Gordon Vance (R)

Members Excused: Rep. Mike Menahan (D)

Members Absent: None

Staff Present: Katie Butcher, Committee Secretary
Joe Kolman, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 606, HB 455, HB 449, HB 466,
HB 524, HB 486, HB 620, HB 623,
HB 564
Executive Action: HB 606

00:00:05 Call to order

HEARING ON HB 606

Opening Statement by Sponsor:

00:03:13 Rep. Scott Mendenhall (R), HD 77, opened the hearing on HB 606, Prohibit zoning of land subject to conservation easement.

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

00:04:14 Rep. Mendenhall

EXECUTIVE ACTION ON HB 606

00:04:31 **Motion/Vote:** Rep. Driscoll moved that **HB 606 BE TABLED.**
Motion carried 17-0 by voice vote.

HEARING ON HB 486

Opening Statement by Sponsor:

00:05:00 Rep. Gary MacLaren (R), HD 89, opened the hearing on HB 486, Generally revise land use and planning laws.

Proponents' Testimony:

00:06:35 Tim Davis, Montana Smart Growth Coalition

EXHIBIT(loh39a01)

00:12:43 Glenn Oppel, Montana Association of Realtors

EXHIBIT(loh39a02)

00:13:24 Denise Alexander, Missoula City Planning Office

00:14:21 Linda Stoll, Montana Association of Planners

00:14:50 Greg Sullivan, Planning Director, Gallatin County

00:15:24 Rick Hill, Montana Building Industry Association

00:15:49 Myra Shults, Montana Association of Counties

Opponents' Testimony:

00:17:06 Russell Crowder, American Dream Montana

Informational Testimony: None

Questions from Committee Members and Responses:

00:19:17 Rep. Ingraham
00:19:36 Ms. Shults
00:20:44 Chairwoman Arntzen
00:20:53 Mr. Davis
00:21:48 Rep. Ingraham
00:22:02 Mr. Davis

Closing by Sponsor:

00:22:54 Rep. MacLaren

HEARING ON HB 466

Opening Statement by Sponsor:

00:25:30 Rep. Paul Beck (D), HD 59, opened the hearing on
HB 466, Providing paid military leave for all public
employees.

EXHIBIT(loh39a03)

Proponents' Testimony:

00:29:12 Mark Ferro, Manufacturing and Mechanical Engineering
Technology
00:30:10 Alec Hansen, League of Cities and Towns

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

00:31:56 Rep. Ingraham
00:32:28 Mr. Hansen

Closing by Sponsor:

00:32:47 Rep. Beck

HEARING ON HB 455

Opening Statement by Sponsor:

00:34:17 Rep. Michele Reinhart (D), HD 97, opened the hearing on
HB 455, Big sky rivers act.

EXHIBIT(loh39a04)

Proponents' Testimony:

00:39:43 Janet Ellis, Montana Audubon

00:44:39 Robert Lubbers, Billings, Montana Yellowstone River
Conservation Forum, Yellowstone Valley Audubon

EXHIBIT(loh39a05)

00:49:16 Hal Harper, Chief Policy Advisor, Office of the
Governor

00:53:38 Jim Rokosch, Ravalli County Commissioner

00:59:02 Carlotta Grandstaff, Ravalli County Commissioner

01:01:43 Carter Kruse, Montana Chapter, American Fisheries
Society

EXHIBIT(loh39a06)

01:07:47 Jeffrey Crouch

01:09:17 Rich Morrissey

01:10:35 Jack Mauer, Bitterroot Chapter, Trout Unlimited;
Ravalli County Fishing Outfitter

01:12:11 Linda Stoll, Montana Association of Planners

01:13:07 Brianna Randall, Clark Fork Coalition

EXHIBIT(loh39a07)

01:14:06 Scott Bossy, Greater Yellowstone Coalition

EXHIBIT(loh39a08)

01:14:51 Harry Murphy

01:15:15 Mark Aagenes, Montana Trout Unlimited

01:15:47 Chris Hunter, Administrator, Fisheries Division
Department of Fish, Wildlife and Parks (FWP)

EXHIBIT(loh39a09)

01:16:13 Daniel Viehland, University of Montana, Montana Public
Interest Group

01:16:45 Joe Gutkoski, President, Montana Rivers

01:17:41 Jacquelyn Corday, Montana Conservation Voters

01:18:17 Lynda Saul, Governor's Task Force for Riparian
Protection

01:18:56 Art Compton, Flathead Basin Commission

01:19:11 Susan Lubbers, Northern Plains Resource Council,
Billings, Montana

01:19:50 George Mathieus, Montana Department of Environmental
Quality

Opponents' Testimony:

01:20:21 Hertha Lund, Attorney, Whittich Law Firm; Bozeman, Montana

01:24:17 Liane Taylor, Helena Association of Realtors

01:25:30 Jim Greil

EXHIBIT(loh39a10)

01:29:01 Jean Williams

01:31:19 Tom Greil

01:33:08 Daniel Cox

01:36:41 Kevin Kelleher

EXHIBIT(loh39a11)

01:42:43 Greg Duncan

01:43:52 Rep. Dee Brown, HD 3, Hungry Horse, Montana

01:44:26 Charles Lapp

01:47:39 Greg Chilcott, Ravalli County Commissioner

01:51:14 Russell Crowder, American Dream Montana

01:55:02 Bill Gallagher, Clark Fork River Land Owner

01:56:59 J.R. Iman, Ravalli County Commissioner

02:01:34 Christopher Greil

02:02:46 Terri Daniel

02:03:51 Bill Myers, Bay Side Park and Marine Center

02:09:33 Niki Sardot, Ravalli County, Citizens for Property Rights

02:10:22 Jan Newman

02:11:24 Fred Hodgeboom, Montanans for Multiple Use

EXHIBIT(loh39a12)

02:13:48 Jan Wisniewski, Darby, Ravalli County Planning Board

02:15:22 Rex Svoboda, Missoula, Montana

EXHIBIT(loh39a13)

02:16:18 Glenn Oppel, Montana Realtors Association

EXHIBIT(loh39a14)

02:17:13 Dewey Baker

02:19:33 Jeff Patterson, Truro, Montana

02:22:54 Rep. Driscoll

02:24:00 Mr. Patterson

02:24:20 Bill Richter

02:25:43 Ken Donovan

EXHIBIT(loh39a15)

02:26:14 John Youngberg, Montana Farm Bureau, Montana Water Resources, Montana Agribusiness Association

02:26:33 Rick Hill, Montana Building Industry Association

02:27:07 Art Baker

02:27:43 Allen Right, Montana Multiple Use Association

02:28:39 Susanna Pyron, Florence, Montana

02:30:07 Robert Johnson, Montana American Federation of Labor -
Congress of Industrial Organizations (AFL-CIO); United
Steel Workers; Smurfit Stone Container; International
Brotherhood of Electrical Workers (IBEW) Local 233

EXHIBIT(loh39a16)

02:30:27 Jack Walsh, Helena Building Industry Association
02:31:49 John Swanson
02:32:51 Don Nicholson, Missoula, Montana
02:34:03 Joe Brenneman, Flathead County Commissioner
02:34:18 Jay Bodner, Montana Stockgrowers Association
02:34:38 Don Allen, Western Environmental Trade Association
02:35:25 Chuck Denowh, Terry Ryan, Flathead Business Industry
Association, Citizens for Balanced Use, United Property
Owners of Montana

EXHIBIT(loh39a17)

02:36:56 Dave Skinner, Kalispell, Montana

EXHIBIT(loh39a18)

02:37:41 Jimmy Canton
02:40:11 Mike Kvasnick, Bozeman, Montana
02:41:07 Toby Malsam, Great Falls Home Builders Association

Informational Testimony:

02:41:33 Kelly Casillas, Community Technical Assistance Program,
Chamber of Commerce

02:45:35 Break

02:55:54 Reconvene

Questions from Committee Members and Responses:

02:56:26 Rep. Ingraham
02:56:49 Ms. Ellis
02:59:29 Rep. Ingraham
02:59:50 Rep. Reinhart
03:00:58 Rep. Berry
03:01:28 Ms. Casillas
03:01:43 Ms. Ellis
03:02:36 Rep. Hands
03:03:31 Ms. Ellis
03:06:21 Rep. Hands
03:06:47 Rep. Reinhart

Closing by Sponsor:

03:09:59 Rep. Reinhart
03:13:41 Rep. Ingraham
03:13:52 Mr. Kolman

HEARING ON HB 449

Opening Statement by Sponsor:

03:14:34 Rep. Bill McChesney (D), HD 40, opened the hearing on
HB 449, Revise state and local government finance laws.

Proponents' Testimony:

03:16:34 Anna Miller, Financial Advisor, Department of Natural
Resources and Conservation

[EXHIBIT\(loh39a19\)](#)

[EXHIBIT\(loh39a20\)](#)

03:29:49 Walt Hill, Seeley Lake Water District

03:33:27 Steve Wade, Montana Rural Water Systems

03:33:52 Gary Forrester, Lockwood Water and Sewer District

Opponents' Testimony:

03:34:36 John Flink, Montana Hospital Association

Informational Testimony:

03:35:20 Dan Semmens, Missoula Office of Dorsey and Whitney

Questions from Committee Members and Responses:

03:38:47 Rep. Stahl

03:40:10 Mr. Semmens

03:45:53 Rep. Stahl

03:47:31 Mr. Semmens

Closing by Sponsor:

03:51:35 Rep. McChesney

HEARING ON HB 620

Opening Statement by Sponsor:

03:53:17 Rep. Mike Jopek (D), HD 4, opened the hearing on
HB 620, Authorize unincorporated areas to organize for
planning and providing services.

Proponents' Testimony:

03:57:43 Joe Brenneman, Flathead County Commissioner

[EXHIBIT\(loh39a21\)](#)

Opponents' Testimony:

04:05:15 Russell Crowder, American Dream Montana
04:07:27 Tim Davis, Montana Smart Growth Coalition
04:08:12 Charles Lapp
04:10:40 Rep. Scott Reichner, HD 9, Bigfork, Montana
04:12:21 Dave Skinner, Kalispell, Montana
04:14:52 Linda Stoll, Missoula County, Montana Association of
Planners
04:15:14 Bill Myers, Bigfork, Montana
04:15:55 John MacDonald, City of Missoula
04:16:05 Dustin Stewart, Montana Building Industry Association

Informational Testimony:

04:16:20 Debbie Jurcich, Property Assessment, Montana Department
of Revenue

Questions from Committee Members and Responses: None

Closing by Sponsor:

04:18:14 Rep. Jopek

HEARING ON HB 524

Opening Statement by Sponsor:

04:20:53 Rep. Michele Reinhart (D), HD 97, opened the hearing on
HB 524, Establish procedures and requirements for
county privatization of services.

Proponents' Testimony:

04:22:11 Terry Minow, MEA-MFT

Opponents' Testimony:

04:24:53 Greg Robertson, Public Works Director, Missoula County
04:34:31 Gary Spaeth, Montana Solid Waste Contractors
Association
04:35:15 Harold Blattie, Montana Association of Counties

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

04:35:44 Rep. Reinhart

HEARING ON HB 623

Opening Statement by Sponsor:

04:36:28 Rep. Mike Milburn (R), HD 19, opened the hearing on
HB 623, Revise laws governing disposal of county and
city land.

Proponents' Testimony:

04:37:17 Joe Briggs, Cascade County Commissioner
04:37:54 Harold Blattie, Montana Association Of Counties
04:38:10 Susan Jensen, Neighbor Works Great Falls
04:38:33 Dustin Stewart, Montana Building Industry Association
04:38:40 Mick Olson, Aware Montana Choice Coalition
04:39:06 Greg Chilcott, Ravalli County Commissioner
04:39:20 Joe Brenneman, Flathead County Commissioner
04:39:31 Alec Hansen, League of Cities and Towns

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

04:40:23 Rep. Milburn

HEARING ON HB 564

Opening Statement by Sponsor:

04:42:26 Rep. Bob Wagner (R), HD 71, opened the hearing on
HB 564, Prohibit local government competition with
private sector.

EXHIBIT (loh39a22)

Proponents' Testimony:

04:51:05 Greg Chilcott, Ravalli County Commissioner

Opponents' Testimony:

04:52:17 Gary Keiler, Butte/Silver Bow Public Works
04:55:43 Alec Hansen, League of Cities and Towns
04:57:47 John MacDonald, City of Missoula
04:59:20 Rep. Jon Sesso, HD 76, Butte, Montana

Informational Testimony: None

Questions from Committee Members and Responses:

05:01:57 Rep. More

Closing by Sponsor:

05:02:14 Rep. Wagner
05:06:49 Rep. Sands

05:07:02 Chairwoman Arntzen

ADJOURNMENT

05:07:08 Adjournment

Katie Butcher, Secretary

kb

Additional Documents:

EXHIBIT(loh39a23) Letters sent in regards to HB 455.

EXHIBIT(loh39a24) Now You Know - Production by FWP.

Additional Documents:

EXHIBIT([loh39aad.pdf](#))

Sections 13 and 19 - These sections require that local governments establish a time limit of 30 days in their subdivision regulations within which a written decision on a subdivision application must be provided to the applicant. **Section 13 will need to be amended to change the time limit from "30 days" to "30 working days."** This amendment is supported by everyone involved in the drafting of the bill.

Section 14 – This section makes it clear that hearings are not required for variances on first minor subdivisions, but are required for other subdivisions.

Sections 15 and 18 – These sections make it clear that a governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding for the rest of the improvements and before issuing a final plat approval.

Section 16 – This section makes it clear that subdivision applications must show easements within and to the proposed subdivision for the location and installation of planned utilities. This section also eliminates a streamline subdivision review process that is unused and conflicts with the streamline subdivision review under 76-3-616.

Section 17 – This section makes it clear that a governing body may not hold a public hearing or a subsequent public hearing for first minor subdivisions.

Section 20 – This section ties the timeframe in which a challenge may be brought against a subdivision decision to the point when the written decision is given to the applicant.

Section 21 – This section repeals 76-3-210 which is now unnecessary because 76-3-616 was created in 2007.

Section 22 – This section makes the bill effective upon passage and approval.

HB 486 is based upon an interim committee bill, SB 110, from the 2007 legislative session that was a consensus bill developed and supported by the Realtors, Builders, Counties, Cities, Smart Growth, Planners, Surveyors, and other groups. This bill is simpler and more focused than the 2007 version for the bill and solves some new problems that have arisen between 2007 and 2009 sessions.

The intent of this bill is to clean up and modernize zoning and subdivision statutes. Many provisions of this bill will help to create a more predictable subdivision and development process.

Amendment Striking Sections 1, 2, and 3.

Section 4 – This section just clarifies how the condominium exemption is filed with the local governing body.

Sections 5 and 10 – These sections modernize the zoning statutes by changing the term “freeholder” to “real property owners.” Section 4 also provides landowners with more certainty by making the timeframe in which a legal challenge may be brought against the creation of a zoning district to 60 days – SB 110 in 2007 had proposed changing this to 30 days but the development community had asked that it be increased to 60 days. This does not change the zoning protest provisions nor does it change the fact that zoning can be amended in the future.

Section 6 – This section clarifies who can sit on the planning and zoning commission including clarifying what to do if there is only one zoning district in a county.

Section 7 – This section cleans up the problem that has arisen where citizen initiated zoning district have been initiated, but where the county has not been able to agree on the regulations or boundaries for the district. This section allows the county to void that unfinished zoning district.

Section 8 – This section helps to modernize the county zoning statutes, but allowing zoning to be flexible and based on local needs and conditions.

Sections 9 and 11 – These sections help to modernize the zoning statutes by replacing outdated and restrictive zoning criteria and guidelines from the 1920s and 30s with more flexible guidelines that are based primarily on public health and safety and to ability to provide future development with infrastructure and services.

Section 12 – This section makes it clear that the aggregation of lots, or combining of lots to create fewer lots, is not a subdivision.

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EXHIBIT 2
DATE 2-19-2009
HB HB 486

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Testimony of Montana Association of REALTORS® (MAR)

Glenn Oppel, Government Affairs Director

House Local Government Committee

Feb. 19, 2009, 3:00 p.m., Rm 172

House Bill 486 – Generally revise land use and planning laws

Sponsor: Rep. Gary MacLaren

MAR Position: Support

HB 486 is based on a consensus bill from the 2007 Session (Senate Bill 110) supported by the REALTORS®, the Builders, MACo, League of Cities and Towns, Smart Growth, and Planners intended to clean up and modernize parts of annexation, zoning, and subdivision law. The bill appears generally to do just that and is for the most part a very positive and supportable bill.

Section 4 clarifies the issue of free holders versus real property owners. "Free Holders" is a term which has crept into the Planning and Zoning Commission sections and does not generally exist otherwise. It added enough confusion to protest considerations that a court action was almost guaranteed. "Real property owners" is a defined and generally understood term which does simplify matters quite a bit.

Section 5 addresses the issue that many counties do not have a legitimate "surveyor," adding the option of putting the county clerk and recorder on the Planning and Zoning Commission is likely a positive. This would allow for an elected official with more land use experience to be present. Currently most counties have combined the office of surveyor with another office that has very little to do with those duties, such as treasurer, county attorney, or even sheriff.

Section 6 creating 76-2-107 allows for the simplification of the removal of a voluntary zoning district with no regulations. Circumstances do occur when a voluntary zoning district is formed and then through various problems, no regulations are enacted.

Section 7 modifies the language of what zoning does. The ability of commissioners to regulate though zoning construction, alteration, and repair of buildings is pretty straightforward. And the "use of buildings" is a fairly normal zoning technique as well.

Section 8 again attempts to modernize language – this time the language of 76-2-203. The prior language derives from the original enactment of the statute which flows from anti-tenement statutes in New York City in the late 20s or early 30s. The terms, not surprisingly then, do not have a very good fit to Montana. Zoning regulations must be designed to eliminate or facilitate something.

Section 9 is designed again to clarify the free holders versus real property owners issue.

Section 10 modified section 76-2-304 to modernize the language regarding what zoning regulations must be designed to do. The comments for section 8 apply here as well.

Section 11, the addition of aggregations of land being exempted from subdivision review, is beneficial to the REALTORS®. By maintaining subsection 2a, requiring that when there are 6 or more lots involved it must go before the governing body, any real benefit in terms of a work around to the subdivision and platting act is lost for the REALTORS®. However, this change is by no means a bad thing and clarifies and preserves something that most cities and counties have been doing. Additionally, it may create the ability to do some "subdivision" like activities with the modification of 5 or fewer lots.

Section 12 modifies section 76-3-504 to require county or city subdivision regulations to set a time limit within which a written decision on a subdivision is provided to the applicant. This is certainly a positive step.

Section 13 modified section 76-3-506 and section 16 which modified 76-3-609 very much work together. The changes to 76-3-609 do what they intend to do which is prohibit public hearings and their additional time, expense, and hassle for first minor subdivisions.

Section 14 modifying 76-3-507 clarifies that to eliminate any confusion regarding what types of bonds or securities are acceptable. All local governments generally accept Letters of Credit for this provision.

Section 15 modifies section 76-3-608 in two ways. The first is fairly innocuous, in that it adds a requirement that easements for utilities be shown going to the subdivision not just within the subdivision. In essence this requires a developer to show that electrical power can reach the subdivision.

Section 16, the notes above for section 13 would apply here as well.

Section 17 dovetails into those modifications that were made in section 14 regarding bondable improvements and the comments for section 17 are the same.

Section 18 is very similar to section 12 and again while it is beneficial that it requires a written statement within a time frame, as to why the subdivision was denied, it would be far better to mandate a specific time.

Section 19 modified section 76-3-625 to clarify that an appeal is taken within 30 days from the date of the written decision. This is a beneficial clarification to everyone.

Section 20 repeals section 76-3-210. With the elimination of 76-3-608(6) this is now a superfluous section.

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Section 16, the notes above for section 13 would apply here as well.

Section 17 dovetails into those modifications that were made in section 14 regarding bondable improvements and the comments for section 17 are the same.

Section 18 is very similar to section 12 and again while it is beneficial that it requires a written statement within a time frame, as to why the subdivision was denied, it would be far better to mandate a specific time.

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Section 20 repeals section 76-3-210. With the elimination of 76-3-608(6) this is now a superfluous section.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: Chairwoman Elsie Arntzen, on February 20, 2009 at
12:00 P.M., in Room 172 Capitol

ROLL CALL

Members Present:

Rep. Elsie Arntzen, Chairwoman (R)
Rep. Betsy Hands, Vice Chairwoman (D)
Rep. Arlene Becker (D)
Rep. Tom Berry (R)
Rep. Robyn Driscoll (D)
Rep. Wanda Grinde (D)
Rep. Robin Hamilton (D)
Rep. Pat Ingraham (R)
Rep. Michael More (R)
Rep. Scott Reichner (R)
Rep. Michele Reinhart (D)
Rep. Gordon Vance (R)

Members Excused: None

Members Absent: Rep. Gary MacLaren, Vice Chairman (R)
Rep. Gerald Bennett (R)
Rep. Bob Ebinger (D)
Rep. Mike Menahan (D)
Rep. Diane Sands (D)
Rep. Wayne Stahl (R)

Staff Present: Katie Butcher, Committee Secretary
Joe Kolman, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing: None
Executive Action: HB 545, HB 522, HB 466, HB 486,
HB 623, HB 524, HB 620, HB 520
HB 564

00:00:00 Call to order
(Rep. MacLaren arrived)

EXECUTIVE ACTION ON HB 545

00:01:47 **Motion:** Rep. Reichner moved that **HB 545 DO PASS.**

Discussion:

00:01:55 Joe Kolman, Legislative Services Division

00:02:25 **Motion:** Rep. Reichner moved that **HB 545 BE AMENDED.**
EXHIBIT(loh40a01)

Discussion:

00:02:43 Rep. Ingraham

00:03:42 Mr. Kolman

(Rep. Sands, Rep. Stahl, and Rep. Menahan arrived)

00:04:30 Rep. Ingraham

00:05:39 Mr. Kolman

00:06:15 Rep. Hands

00:06:50 Rep. Ingraham

00:08:43 **Vote:** Motion carried unanimously by voice vote.
Rep. Ebinger and Rep. Bennett voted by proxy.

00:09:04 **Motion/Vote:** Rep. Hamilton moved that **HB 545 DO PASS AS AMENDED.** Motion carried 16-2 by voice vote with Rep. Menahan and Rep. Vance voting no. Rep. Ebinger and Rep. Bennett voted by proxy.

EXECUTIVE ACTION ON HB 522

00:09:59 **Motion:** Rep. Reinhart moved that **HB 522 DO PASS.**

00:10:45 **Motion:** Rep. Reichner moved that **HB 522 BE AMENDED.**
EXHIBIT(loh40a02)

Discussion:

00:11:08 Mr. Kolman

00:11:36 Rep. Reinhart

00:11:40 Rep. Reichner

00:12:06 **Vote:** Motion carried unanimously by voice vote.
Rep. Ebinger and Rep. Bennett voted by proxy.

(Rep. Bennett arrived.)

00:12:22 **Motion/Vote:** Rep. Reinhart moved that **HB 522 DO PASS AS AMENDED**. Motion carried unanimously by voice vote.
Rep. Ebinger voted by proxy.

EXECUTIVE ACTION ON HB 466

00:13:02 **Motion:** Rep. Ingraham moved that **HB 466 DO PASS**.

00:13:36 **Motion:** Rep. Stahl moved that **HB 466 BE AMENDED**.
EXHIBIT(loh40a03)

Discussion:

00:14:00 Mr. Kolman
00:14:30 Rep. Becker
00:15:08 Rep. Stahl
00:15:21 Rep. Becker

00:15:45 **Motion:** Rep. Sands moved to **SEGREGATE AMENDMENT ONE AND TO VOTE ON AMENDMENTS TWO AND THREE**.

Discussion:

00:16:15 Rep. Ingraham
00:16:52 Mr. Kolman
00:17:17 Rep. Ingraham
00:17:52 Rep. Hands
00:18:27 Rep. Grinde
00:18:48 Rep. MacLaren
00:19:12 Rep. Stahl
00:19:23 Sheryl Wood, Montana Association of Counties
00:21:00 Rep. Stahl
00:21:43 Rep. Hands
00:22:14 Rep. Becker
00:22:35 Chairwoman Arntzen
00:22:43 Mr. Kolman
00:22:55 Rep. Hands
00:23:37 Rep. Reinhart

00:24:00 **Vote:** Motion carried unanimously by voice vote.
Rep. Ebinger voted by proxy.

00:24:36 **Motion/Vote:** Rep. Hamilton moved that **HB 466 DO PASS AS AMENDED**. Motion carried 15-3 by voice vote with Rep. Bennett, Rep. More, and Rep. Stahl voting no. Rep. Ebinger voted by proxy.

EXECUTIVE ACTION ON HB 524

00:24:49 **Motion/Vote:** Rep. Reinhart moved that **HB 524 DO PASS**. Motion failed 8-10 by roll call vote with Rep. Driscoll, Rep. Ebinger, Rep. Grinde, Rep. Hamilton, Rep. MacLaren, Rep. Menahan, Rep. Reinhart, and Rep. Sands voting aye. Rep. Ebinger voted by proxy.

00:27:52 **Motion/Vote:** Rep. Vance moved that **HB 524 BE TABLED AND THE VOTE REVERSED**. Motion carried 17-0 by voice vote.

EXECUTIVE ACTION ON HB 486

00:28:10 **Motion:** Rep. MacLaren moved that **HB 486 DO PASS**.

00:28:28 **Motion:** Rep. MacLaren moved that **HB 486 BE AMENDED**. [EXHIBIT\(1oh40a04\)](#)

Discussion:

00:29:09 Mr. Kolman
00:29:32 Chairwoman Arntzen
00:29:41 Rep. Maclaren

00:30:17 **Vote:** Motion carried unanimously by voice vote. Rep. Ebinger voted by proxy.

00:30:31 **Motion/Vote:** Rep. MacLaren moved that **HB 486 DO PASS AS AMENDED**. Motion carried unanimously by voice vote. Rep. Ebinger voted by proxy.

EXECUTIVE ACTION ON HB 620

00:31:02 **Motion/Vote:** Rep. Reichner moved that **HB 620 BE TABLED**. Motion carried unanimously by voice vote. Rep. Ebinger voted by proxy.

EXECUTIVE ACTION ON HB 623

00:31:46 **Motion:** Rep. Hands moved that **HB 623 DO PASS**.

00:31:58 **Motion:** Rep. Hands moved that **HB 623 BE AMENDED**. [EXHIBIT\(1oh40a05\)](#)

Discussion:

00:32:35 Mr. Kolman

00:34:04 Rep. Stahl

00:34:25 Rep. More

00:34:51 **Vote:** Motion carried unanimously by voice vote.
Rep. Ebinger voted by proxy.

00:35:03 **Motion:** Rep. Hands moved that **HB 623 DO PASS AS
AMENDED.**

Discussion:

00:35:12 Rep. Bennett

00:35:47 Rep. Hands

00:36:13 **Vote:** Motion carried unanimously by voice vote.
Rep. Ebinger voted aye by proxy.

EXECUTIVE ACTION ON HB 564

00:37:05 **Motion:** Rep. Reichner moved that **HB 564 DO PASS.**

00:37:17 **Motion:** Rep. Reichner moved that **HB 564 BE AMENDED.**
EXHIBIT(loh40a06)

Discussion:

00:37:33 Mr. Kolman

00:37:59 **Vote:** Motion carried 15-3 by voice vote with Rep.
Ebinger, Rep. Hamilton, and Rep. Hands voting no. Rep.
Ebinger voted by proxy.

00:38:18 **Motion:** Rep. Reichner moved that **HB 564 DO PASS AS
AMENDED.**

00:38:26 **Substitute Motion/Vote:** Rep. Driscoll made a substitute
motion that **HB 564 BE TABLED.** Substitute motion carried
12-6 by voice vote with Rep. Bennett, Rep. Berry, Rep.
Ingraham, Rep. MacLaren, Rep. More, and Rep. Vance
voting no. Rep. Ebinger voted by proxy.

EXECUTIVE ACTION ON HB 520

00:39:22 **Motion/Vote:** Rep. Stahl moved **HB 520 BE TAKEN FROM THE TABLE**. Motion carried 15-3 by voice vote with Rep. More, Rep. Reichner, and Rep. Vance voting no.

00:40:26 **Motion:** Rep. Reinhart moved that **HB 520 DO PASS**.

00:40:41 **Motion:** Rep. Stahl moved that **HB 520 BE AMENDED**.
[EXHIBIT\(loh40a07\)](#)

Discussion:

00:41:19 Mr. Kolman
00:42:37 Rep. Reinhart
00:44:02 Rep. Reichner
00:44:07 Rep. Hands
00:44:29 Rep. More
00:45:32 Rep. Stahl
00:46:48 Rep. Reichner
00:47:23 Rep. Hands
00:47:33 Rep. Reinhart
00:48:16 Rep. Bennett
00:48:29 Rep. Vance
00:48:36 Rep. Reichner
00:48:46 Rep. Menahan
00:49:31 Rep. Hands

00:49:44 **Vote:** Motion carried 11-7 by voice vote with Rep. Berry, Rep. Ebinger, Rep. Grinde, Rep. Hands, Rep. Ingraham, Rep. More, and Rep. Reichner voting no. Rep. Ebinger voted by proxy.

00:50:10 **Motion:** Rep. Reinhart moved that **HB 520 DO PASS AS AMENDED**.

00:50:38 **Substitute Motion/Vote:** Rep. Reichner moved that **HB 520 BE TABLED**. Motion failed 8-10 by roll call vote with Rep. Arntzen, Rep. Bennett, Rep. Berry, Rep. Grinde, Rep. Hands, Rep. More, Rep. Reichner, and Rep. Vance voting aye. Rep. Ebinger voted by proxy.

00:51:51 **Motion:** Rep. Reinhart moved that **HB 520 BE AMENDED**.
[EXHIBIT\(loh40a08\)](#)

00:53:18 Chairwoman Arntzen

00:53:29 **Vote:** Motion carried 15-3 by voice vote with Rep. Arntzen, Rep. Berry, and Rep. Driscoll voting no.

00:53:44 **Motion/Vote:** Rep. Reinhart moved that **HB 520 DO PASS AS AMENDED**. Motion failed 9-9 by roll call vote with Rep. Becker, Rep. Driscoll, Rep. Ebinger, Rep. Hamilton, Rep. MacLaren, Rep. Menahan, Rep. Reinhart, Rep. Sands, and Rep. Stahl voting aye. Rep. Vance and Rep. Ebinger voted by proxy.

ADJOURNMENT

00:54:52 Adjournment

Katie Butcher, Secretary

kb

Additional Documents:

EXHIBIT ([loh40aad.pdf](#))

Amendments to House Bill No. 486
1st Reading Copy

Requested by Representative Gary MacLaren

For the House Natural Resources Committee

Prepared by Joe Kolman
February 17, 2009 (9:14am)

1. Title, line 10 through line 11.
Strike: "7-2-4303" on line 10 through "7-2-4608," on line 11
2. Page 1, line 17 through page 2, line 9.
Strike: section 1 through section 3 in their entirety
Renumber: subsequent sections
3. Page 13, line 9.
Following: "30"
Insert: "working"

- END -

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: Chairman John Esp, on March 11, 2009 at 3:00 P.M.,
in Room 405 Capitol

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Jeff Essmann, Vice Chairman (R)
Sen. Gregory D. Barkus (R)
Sen. Ron Erickson (D)
Sen. Steven Gallus (D)
Sen. Kim Gillan (D)
Sen. Verdell Jackson (R)
Sen. Jesse Laslovich (D)
Sen. Bruce Tutvedt (R)

Members Excused: None

Members Absent: None

Staff Present: Leanne Heisel, Legislative Branch
Rachel Saul, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 45, 2/20/2009; HB 486, 3/2/2009;
HB 545, 3/2/2009; HB 563, 3/2/2009;
HB 623, 3/2/2009

Executive Action: HB 324, HB 45, HB 545

HEARING ON HB 486

Opening Statement by Sponsor:

00:00:58 Rep. Gary MacLaren (R), HD 89, opened the hearing on HB 486, Generally revise land use and planning laws.

Proponents' Testimony:

00:02:12 Tim Davis, Montana Smart Growth Coalition

[EXHIBIT\(los54a01\)](#)

00:10:56 Glenn Oppel, Montana Association of Realtors (MAR)

[EXHIBIT\(los54a02\)](#)

00:13:10 Greg Sullivan, Planning Director, Gallatin County

[EXHIBIT\(los54a03\)](#)

00:15:19 Steve White, Gallatin County Commissioner

[EXHIBIT\(los54a04\)](#)

00:22:47 Linda Stoll, Montana Association of planners,
Representing Harold Blattie, MACo

00:24:14 Dustin Stewart, Montana Building Industry Association

00:25:03 John McDonald, City of Missoula

Opponents' Testimony:

00:25:45 None

Informational Testimony:

00:25:48 None

Questions from Committee Members and Responses:

00:25:52 Sen. Tutvedt

00:26:27 Mr. Opple

00:26:52 Sen. Erickson

00:27:15 Ms. Stoll

00:27:29 Chairman Esp

00:28:00 Mr. White

00:28:56 Chairman Esp

00:29:11 Mr. White

00:29:30 Sen. Essmann

00:29:38 Sen. Jackson

00:30:03 Mr. White

00:31:48 Sen. Jackson

00:31:55 Mr. White

00:32:00 Chairman Essmann

00:32:46 Ms. Stoll

00:32:56 Chairman Essmann

00:33:04 Ms. Stoll

00:33:38 Sen. Esp

00:33:50 Mr. Davis

Closing by Sponsor:

00:34:47 Rep. MacLaren

HEARING ON HB 623

Opening Statement by Sponsor:

00:36:27 Rep. Mike Milburn (R), HD 19, opened the hearing on HB 623, Revise laws governing disposal of county and city land.

Proponents' Testimony:

00:37:11 Joe Briggs, County Commissioner

00:38:07 Alec Hansen, Montana League of City and Towns (MLCT)

Opponents' Testimony:

00:39:50 None

Informational Testimony:

00:39:54 None

Questions from Committee Members and Responses:

00:39:58 Sen. Gillan

00:40:26 Rep. Milburn

00:40:57 Sen. Gillan

00:41:05 Mr. Briggs

00:41:24 Chairman Esp

00:41:33 Harold Blattie, Montana Association of Counties (MACo)

00:42:11 Sen. Jackson

00:42:33 Rep. Milburn

00:43:03 Sen. Jackson

00:43:13 Mr. Blattie

00:43:48 Sen. Barkus

00:44:17 Mr. Briggs

00:44:36 Sen. Barkus

00:45:11 Mr. Briggs

00:45:36 Sen. Barkus
00:46:25 Mr. Blattie
00:47:06 Sen. Barkus
00:47:50 Mr. Blattie

Closing by Sponsor:

00:48:20 Rep. Milburn

Distributed to Committee members after hearing HB 623
EXHIBIT(los54a05)

00:50:21 Recess

HEARING ON HB 45

Opening Statement by Sponsor:

00:55:10 Rep. Pat Ingraham (R), HD 13, opened the hearing on HB
45, Compliance with federal law for forest reserve
payments.

Proponents' Testimony:

00:58:52 Harold Blattie, Executive Director, MACo
01:01:06 Gordon Morris, Lewis and Clark County

Opponents' Testimony:

01:01:58 None

Informational Testimony:

01:02:01 None

Questions from Committee Members and Responses:

01:02:08 None

Closing by Sponsor:

01:02:21 Rep. Ingraham

EXECUTIVE ACTION ON HB 45

01:03:33 **Motion:** Sen. Erickson moved that **HB 45 BE CONCURRED IN.**

Discussion:

01:03:45 Sen. Essmann

01:03:57 **Vote:** Motion that **HB 45 BE CONCURRED IN** carried unanimously by voice vote. Sen. Laslovich voted by proxy. Sen. Curtiss will carry the bill on the Senate floor.

HEARING ON HB 563

Opening Statement by Sponsor:

01:05:03 Rep. Deborah Kottel (D), HD 20, opened the hearing on HB 563, Legalization of county roads.

Proponents' Testimony:

01:09:23 Harold Blattie, Executive Director, MACo
01:12:56 Gordon Morris, Lewis and Clark County, Montana County Road Services
01:14:38 Steve White, Gallatin County Commissioner

Opponents' Testimony:

01:15:24 Andy Skinner, self
EXHIBIT(los54a06)
01:21:14 Steve Skinner, self
01:24:44 Bill Gallagher, self
01:30:11 Cory Swanson, for Chuck Denowh, United Property Owners of Montana

Informational Testimony:

01:30:39 None

Questions from Committee Members and Responses:

01:30:46 Sen. Essmann
01:31:22 Rep. Kottel
01:31:49 Sen. Essmann
01:32:06 Rep. Kottel
01:33:05 Sen. Essmann
01:33:56 Rep. Kottel

01:36:16 Sen. Erickson
01:37:28 Rep. Kottel
01:38:32 Sen. Jackson
01:40:08 Rep. Kottel
01:40:54 Sen. Jackson
01:41:53 Chairman Esp
01:43:26 Sen. Barkus
01:43:57 Mr. A Skinner
01:44:04 Sen. Barkus
01:44:09 Mr. A Skinner
01:44:37 Sen. Barkus
01:44:41 Mr. A Skinner
01:45:12 Sen. Gallus
01:45:47 Rep. Kottel
01:45:54 Sen. Essmann
01:46:11 Mr. Blattie
01:47:21 Sen. Tutvedt
01:47:52 Mr. Blattie
01:48:29 Sen. Tutvedt
01:49:38 Rep. Kottel
01:49:45 Sen. Tutvedt
01:49:55 Rep. Kottel

Closing by Sponsor:

01:50:20 Rep. Kottel

HEARING ON HB 545

Opening Statement by Sponsor:

01:51:37 Rep. Chas Vincent (R), HD 2, opened the hearing on HB 545, Revise membership of county compensation boards.

Proponents' Testimony:

01:56:35 Harold Blattie, Executive Director, MACo
01:56:59 Gordon Morris, self
01:58:03 Steve White, Chairman, Gallatin County Commissioners

Opponents' Testimony:

01:59:30 None

Informational Testimony:

01:59:32 None

Questions from Committee Members and Responses:

01:59:35 Sen. Jackson
02:01:00 Rep. Vincent
02:01:14 Sen. Jackson
02:01:44 Chairman Esp
02:02:01 Sen. Essmann
02:02:18 Rep. Vincent
02:03:39 Sen. Essmann
02:03:56 Chairman Esp
02:04:40 Sen. Barkus
02:04:52 Rep. Vincent

Closing by Sponsor:

02:05:05 Rep. Vincent

02:06:30 Chairman Esp

(Sen. Laslovich entered the room.)

EXECUTIVE ACTION ON HB 545

02:07:05 **Motion/Vote:** Sen. Gallus moved that **HB 545 BE CONCURRED IN**. Motion carried unanimously by voice vote. Sen. Esp will carry HB 545 on the Senate floor.

02:07:46 Chairman Esp

(Sen. Gillan and Sen. Essmann absent from room)

EXECUTIVE ACTION ON HB 324

02:09:02 **Motion:** Sen. Barkus moved that **HB 324 BE CONCURRED IN**.

02:09:05 **Motion:** Sen. Barkus moved that **HB 324 BE AMENDED**.
[EXHIBIT \(los54a07\)](#)

Discussion:

02:09:29 Sen. Barkus

02:10:34 **Vote:** Motion that **HB 324 BE AMENDED** carried unanimously by voice vote. Sen. Gillan and Sen. Essmann voted by proxy.

02:10:47 **Motion/Vote:** Sen. Barkus moved that **HB 324 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote. Sen. Gillan and Sen. Essmann voted by proxy. Sen. Jackson will carry HB 324 on the Senate floor.

ADJOURNMENT

Adjournment: 5:00 P.M.

Rachel Saul, Secretary

Additional Documents:

EXHIBIT ([los54aad.pdf](#))

HB 486 is based upon an interim committee bill, SB 110, from the 2007 legislative session that was a consensus bill developed and supported by the Realtors, Builders, Counties, Cities, Smart Growth, Planners, Surveyors, and other groups. This bill is simpler and more focused than the 2007 version for the bill and solves some new problems that have arisen between 2007 and 2009 sessions.

HB 486 was supported in the House Local Government Committee by Realtors, Builders, Counties, Smart Growth, and Planners groups as well as individual cities and counties.

The intent of this bill is to clean up and modernize zoning and subdivision statutes. Many provisions of this bill will help to create a more predictable subdivision and development process.

Section 1 – This section just clarifies how the condominium exemption to subdivision review is filed with the local governing body.

Sections 2 and 7 – These sections modernize the zoning statutes by changing the term “freeholder” to “real property owners.” Section 2 also provides landowners with more certainty by making the timeframe in which a challenge may be brought against the creation of a zoning district to 60 days – SB 110 in 2007 had proposed changing this to 30 days but the development community had asked that it be increased to 60 days. This does not change the zoning protest provisions nor does it change the fact that zoning can be amended in the future.

Section 3 – This section clarifies who can sit on a planning and zoning commission including clarifying what to do if there is only one zoning district in a county.

Section 4 – This section cleans up the problem that has arisen where a citizen initiated zoning district has been initiated, but where the county has not been able to agree on the regulations or boundaries for the district. This section allows the county to void that unfinished zoning district.

Section 5 – This section helps to modernize the county zoning statutes by allowing zoning to be flexible and based on local needs and conditions.

Sections 6 and 8 – These sections help to modernize the zoning statutes by replacing outdated and overly restrictive zoning criteria and guidelines from the 1920s and 30s with more flexible guidelines that are based primarily on public health and safety and the ability to provide future development with infrastructure and services.

Section 9 – This section makes it clear that the aggregation of lots, or combining of lots to create fewer lots, is not a subdivision.

Sections 10 and 16 - These sections require that local governments establish a time limit of 30 working days in their subdivision regulations within which a written decision on a subdivision application must be provided to the applicant.

Section 11 – This section makes it clear that hearings are not required for variances on first minor subdivisions, but are required for other subdivisions.

Sections 12 and 15 – These sections make it clear that a governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding for the rest of the improvements and before issuing a final plat approval.

Section 13 – This section makes it clear that subdivision applications must show easements within and to the proposed subdivision for the location and installation of planned utilities. This section also eliminates a streamline subdivision review process that is unused and conflicts with the streamline subdivision review under 76-3-616.

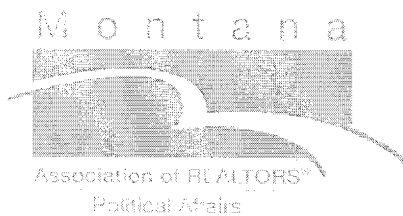
Section 14 – This section makes it clear that a governing body may not hold a public hearing or a subsequent public hearing for first minor subdivisions.

Section 17 – This section ties the timeframe in which a challenge may be brought against a subdivision decision to the point when the written decision is given to the applicant.

Section 18 – This section repeals 76-3-210 which is now unnecessary because there was a streamline subdivision review process created under 76-3-616 in 2007.

Section 19 – This section makes the bill effective upon passage and approval.

-Prepared by Tim Davis with the Montana Smart Growth Coalition



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SENATE LOCAL GOVERNMENT
EXHIBIT NO. 2
DATE 3.11.2009
BILL NO. HB 486

Testimony of Montana Association of REALTORS® (MAR)
Glenn Oppel, Government Affairs Director
Senate Local Government Committee, Mar. 11, 2009, 3:00 p.m., Rm 405

House Bill 486 – Generally revise land use and planning laws
Sponsor: Rep. Gary MacLaren

MAR Position: Support

HB 486 is based on a consensus bill from the 2007 Session (Senate Bill 110) supported by the REALTORS®, the Builders, MACo, League of Cities and Towns, Smart Growth, and Planners intended to clean up and modernize parts of annexation, zoning, and subdivision law. The bill appears generally to do just that and is for the most part a very positive and supportable bill.

Section 1 is a change to the condominium declaration filings. It adds a new subpart 8 to section 70-23-301. In essence, this requires a certification from the local government that the condominiums are exempt from review before they can be filed. Clarifying what grounds the local government entity has to state that condominiums are not exempt from review is helpful. This is a section that essentially codifies most local government's current practice, which is to refuse to record condominium declarations that they do not feel are in compliance with 76-3-203 or the exemptions in other parts of the subdivision and planning act.

Section 2 clarifies the issue of free holders versus real property owners. "Free holders" is a term that has crept into the Planning and Zoning Commission sections and does not generally exist otherwise. It added enough confusion to protest considerations that a court action was almost guaranteed. "Real property owners" is a defined and generally understood term which does simplify matters.

Section 3 addresses the issue that many counties do not have a legitimate "surveyor," adding the option of putting the county clerk and recorder on the Planning and Zoning Commission is a positive. This would allow for an elected official with more land use experience to be present. Currently most counties have combined the office of surveyor with another office that has very little to do with those duties, such as treasurer, county attorney, or even sheriff.

Section 4 amendments to 76-2-107 allow for the simplification of the removal of a voluntary zoning district with no regulations. Circumstances do occur when a voluntary zoning district is formed and then through various problems, no regulations are enacted. This is essentially an intra-governmental issue and is of no particular interest to the REALTORS®.

Section 5 modifies the language of what zoning does. The language in subsections (2) and (4) are inartful and in need of revision to clearly state what zoning can do. The new language in subsection (1)(a) rewords the language in stricken subsections (2) and (4) in a manner that does not decrease or increase a county's current zoning authority. MAR does not believe that the new language in (1)(a) provides *new authority* for counties to zone for density alone. Current law already allows such zoning practices. Moreover, MAR supports reducing to a reasonable limit the length of time one has to file an action challenging the creation of a zoning district. MAR would support an amendment to increase the 60-day amendment to 120 days. MAR believes that the right of property owners to challenge a zoning district must be balanced with regulatory predictability and certainty. Subdivision proposals pending

when a challenge is made could very well be delayed or stopped. If a developer or property owner desires to challenge a zoning district, they should do so as quickly as possible so that the question is resolved and does not adversely impact or cloud the developer's title, or even prevent development.

Section 6 modernizes language – this time the language of 76-2-203. The prior language derives from the original enactment of the statute, which flows from anti-tenement statutes in New York City in the late 20s or early 30s. The terms, not surprisingly then, do not have a very good fit to Montana. Zoning regulations must be designed to eliminate or facilitate something.

Section 7 is designed to clarify the “free holders” versus “real property owners” issue, so the comments in Section 2 apply here.

Section 8 modifies section 76-2-304 to modernize the language regarding what zoning regulations must be designed to do, so the comments for Section 6 apply here.

Section 9, the addition of aggregations of land being exempted from subdivision review, is beneficial to MAR members.

Section 10 modifies section 76-3-504 to require county or city subdivision regulations to set a time limit within which a written decision on a subdivision is provided to the applicant. This is certainly a positive step, and MAR considers the 30 working day time limit reasonable. In the interests of regulatory predictability and certainty, it is critical to have a prescribed time limit.

Section 11 modifies section 76-3-506 and Section 16 which modifies 76-3-609 very much work together. It makes clear that a hearing for a variance on first minor subdivisions does not need to occur. The changes to 76-3-609 prohibit public hearings and their additional time, expense, and hassle for first minor subdivisions.

Section 12 modifying 76-3-507 clarifies confusion regarding what types of bonds or securities are acceptable. Local governments generally accept Letters of Credit for this provision.

Section 13 modifies section 76-3-608 in two ways. The first is fairly innocuous, in that it adds a requirement that easements for utilities be shown going to the subdivision not just within the subdivision. In essence this requires a developer to show that electrical power can reach the subdivision. The second modification is that subsection 6 is removed. In the 2007 Legislature 76-3-616 was adopted, which effectively does the exact same thing, though better.

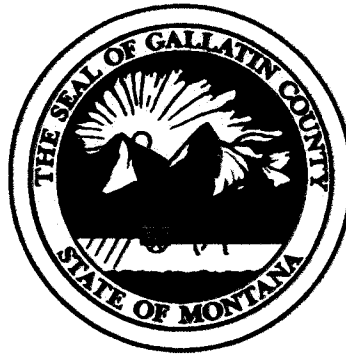
Section 14, the notes above for Section 13 would apply here as well.

Section 15 dovetails into those modifications that were made in Section 12 regarding bondable improvements and the comments for that section would apply here.

Section 16 is very similar to section ¹⁰~~12~~ and it is beneficial require a written statement within a 30 working day time limit as to why the subdivision was denied. In the interests of regulatory predictability and certainty, it is critical to have a prescribed time limit.

Section 17 modifies section 76-3-625 to clarify that an appeal must be taken within 30 days from the date of the written decision. This is a beneficial clarification to everyone.

Section 18 repeals section 76-3-210. With the elimination of 76-3-608(6), 76-3-210 this is now a superfluous section.



**Montana Senate Local Government Committee
RE: Support for HB 486 (2009)**

**Greg Sullivan
Gallatin County Planning Director**

March 11, 2009

Mr. Chairman and Members of the Committee:

The Gallatin County Board of County Commissioners urges you to pass HB 486.

The Gallatin County Commission believes this bill speaks to two critical concerns regarding how the County addresses growth and change and facilitates economic development.

- 1. The bill provides a much needed clean up to numerous administrative provisions of Montana's land use laws; and**
- 2. The bill continues to advance the Montana proposition that local governments, within certain limits proscribed by the Legislature, are undeniably in the best position to determine how to develop land use tools to address their own unique planning challenges.**

This bill will allow Gallatin County to create zoning districts and regulations that addresses the concerns citizens and landowners care about rather than a laundry list of archaic statutory requirements. For example:

- The Gallatin County Commission has been exploring **development of a rural zoning district** that seeks to primarily addresses **density only** – the Commission is not interested

in addressing uses, setbacks, heights, etc... in this process but rather encourages and supports grass roots neighborhood planning and zoning efforts to addresses uses. The manner and extent that the County, with the input of citizens and landowners, addresses public health, safety, and general welfare should be left to the County and its citizens.

- In addition, the Gallatin County Commission could choose, on general welfare grounds, to only address **sexually oriented businesses or billboards** in certain areas. This legislation would allow them to do so without having to address the laundry list of archaic statutory requirements.
- Finally, Gallatin County has been working diligently to resolve a long-running conflict regarding **gravel pits**. The only tool the County has to implement solutions to this conflict is zoning. A County should be able to implement creative solutions to gravel pits through zoning without having to address the laundry list of archaic statutory requirements.

Please note the County Commission supports a reduction in the time frame for challenging the creation of a zoning district from five years but would **support an amendment that would raise the time frame above the 60 days listed in the bill**. The County Commission understands that upon adoption of a zoning district many families make significant decisions regarding the future of their properties and these decisions have long term financial impacts. Waiting for five years (and possibly eight if the legal challenge is not served right away) creates an enormous amount of economic uncertainty for landowners. Yet the Commission also realizes 60 days is a very short time frame for mounting a legal challenge especially for landowners who are not familiar with legal processes or lack the resources to hire an attorney to represent their interests. Thus, the County Commission supports the reduction but suggests a slightly longer time period for challenging the creation of a district of no longer than six months This proposal in no way reduces the County Commission's support of passage of the bill.

As for advancing the proposition that local governments, within certain limits proscribed by you, are undeniably in the best position to determine how to produce land use tools to address our unique planning challenges, the Gallatin County Commission fully supports the adoption of amendments to Sections 8 and 9 of this bill.

March 11, 2009

Testimony and attachments relating to HB486 – Senate Local Government Committee

Steve White, Bozeman, MT

HB486 is a reintroduction of SB110 that was introduced in the 2007 session by Senator Liable.

Though I concur with many sections of this bill, I am requesting a revisit of parts of Sections 5 & 6. Attached are suggested amendments to these sections.

Zoning is the way the governments control the physical development of land and the kinds of uses to which each individual property may be put.

Zoning laws typically specify the areas in which residential, industrial, recreational or commercial activities may take place. For example, an R-1 residential zone might allow only single-family detached homes as opposed to duplexes or apartment complexes. On the other hand, a C-1 commercial zone might be zoned to permit only certain commercial or industrial uses in one jurisdiction, but permit a mix of housing and businesses in another jurisdiction.

Zoning is defined as the division of a jurisdiction into districts to enable the regulation of land according to the nature and use of the land in order to promote the orderly development of the area, and the protection of public health, safety and general welfare.

Zoning regulations must be reasonable. For example, the size and location of signs may be regulated, but to ban them completely is considered unreasonable.

Zoning must not be confiscatory. If land is regulated to the extent it cannot be used for anything of economic value, the effect is to take the land. The courts have ruled that these regulations have exceeded the boundaries of power and are unconstitutional.

Ordinances should be uniform for each class of property throughout any zone. For example, all structures must be the same setback distance from the road in all townships. All housing developments must have the same distance of road frontage as all other housing districts in the same category.

In Montana, Part 2 zoning must conform to the criteria and guidelines as listed in 76-2-203 MCA. The proposed language in Section 5 of HB486 (page 4, lines 26-28) allow density to be used as a 'single issue' when creating a '201' district. By zoning for only density, it is unlikely that this would be enough to satisfy the required criteria for a zoning district. To resolve this, it is necessary to either remove density from the list, or require that density include 'use of

buildings / land'. In many cases, zoning districts address density as part of the 'use of land' section of statute. (see **Amendment #1**)

In addition, the proposed language should conform in structure to other sections of zoning laws (see **Attachment 1**).

Present law defines the statute of limitations for challenge of adopted '201' zoning districts as 5 years. HB486 proposes to reduce that to 60 days (SB110 proposed 30 days). A more reasonable time limit would be 3 years. I am not aware of any challenges that were initiated once zoning was adopted. A longer time period places a greater burden on government to exercise great care in the formation of a zoning district. (see **Amendment #2**)

Whenever a '201' zoning district is formed, property owners within the proposed district are provided 30 days to protest the adoption. HB486 is modifying the language from 'freeholders' to 'real property owners'. Because some owners are not residents, the 30 day limit has always seemed a bit short. It is suggested that the bill be amended to 60 days. (see **Amendment #3**) (SB 345 also contains the '30-60' modification)

Zoning regulation must be reasonable. For example, the size and location of signs may be regulated, but to ban them completely is considered unreasonable. **Amendment #4** would restore 'reasonable' as a requirement in creating zoning regulations.

Summary

The above modifications are important for citizens in Montana. It is important that zoning regulations be fair and reasonable. Please consider the proposed amendments to HB486. With the amendments, I support HB486.

Title 76 Zoning Laws (HB486 Attachment 1)

Part 1 (County / Petition) Zoning:

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

Part 2 (County / Top-Down) Zoning:

76-2-202. Establishment of zoning districts -- regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

Part 3 (Municipality / Top-Down):

76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

Zoning Criteria & Guidelines (HB486 Attachment 2)

Per current Montana law:

76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with the growth policy or a master plan, as provided for in 76-2-201(2); and
- (b) designed to:
 - (i) lessen congestion in the streets;
 - (ii) secure safety from fire, panic, and other dangers;
 - (iii) promote public health and general welfare;
 - (iv) provide adequate light and air;
 - (v) prevent the overcrowding of land;
 - (vi) avoid undue concentration of population; and
 - (vii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Zoning regulations must be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

After passage of HB486:

76-2-203. Criteria and guidelines for zoning regulations. (1) Zoning regulations must be:

- (a) made in accordance with the growth policy; and
- (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) In the adoption of zoning regulations, the board of county commissioners shall consider:

- (a) reasonable provision of adequate light and air;
- (b) the effect on motorized and nonmotorized transportation systems;
- (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities;
- (d) the character of the district and its peculiar suitability for particular uses; and
- (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.

HB486 Amendment #1 (Page 4, lines 24-26)

Purpose: Restore regulation language to be in closer conformance with the other sections of MCA zoning regulations (attached), AND to correctly address the requirements and purposes of zoning (attached).

establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate ~~the density, erection, construction, reconstruction, alteration, repair, location, or use of buildings or structures or the use of land~~ **AND RESTRICT THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR, OR USE OF BUILDINGS, STRUCTURES, OR LAND.**

(Above language is currently used in 76-2-302 MCA)

OR

establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning regulations, the board may regulate the **DENSITY**, erection, construction, reconstruction, alteration, repair, **OR** location, **OR AND** use of buildings or structures **OR AND** the use of land **AND DENSITY.**

HB486 Amendment #2 (Page 4, line 30)

Purpose: Increase the statute of limitations to a more reasonable length of time.

(b) An action challenging the creation of a zoning district or adoption of zoning regulations must be commenced within ~~5 years~~ 60 days **3 YEARS** after the date of the order by the board of county commissioners creating the district or adopting the regulations.

HB486 Amendment #3 (Page 7, line 13)

Purpose: Modify the length of time to receive property owner protests from 30 days to 60 days.

(d) that for ~~30~~ 60 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

HB486 Amendment #4 (Page 6, line 4)

Purpose: It is important that zoning regulations be reasonable.

(2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the adoption of zoning regulations, the board of county commissioners shall **REASONABLY** consider:

MINUTES

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: Chairman John Esp, on March 27, 2009 at 3:00 P.M.,
in Room 405 Capitol

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Jeff Essmann, Vice Chairman (R)
Sen. Gregory D. Barkus (R)
Sen. Steven Gallus (D)
Sen. Kim Gillan (D)
Sen. Verdell Jackson (R)
Sen. Jesse Laslovich (D)
Sen. Bruce Tutvedt (R)

Members Excused: Sen. Ron Erickson (D)

Members Absent: None

Staff Present: Leanne Heisel, Legislative Branch
Debra Polhemus, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: NONE

Executive Action:

<u>TABLED:</u>	<u>DO CONCUR AS AMENDED:</u>
SB 522	SB 420
SB 608	SB 630
	SB 486

CONTINUED EXECUTIVE ACTION ON HB 420

(Previous executive action on March 25, 2009)

00:00:45 **Motion/Vote:** Sen. Essmann moved to **RECONSIDER PREVIOUS ACTION on SB 420**. Motion carried unanimously by voice vote of those present and voting.

00:01:23 **Motion:** Sen. Essmann moved that **HB 420 BE AMENDED. EXHIBIT(los68a01)**

Discussion:

00:02:29 Chairman Esp

00:02:52 **Vote:** Motion carried unanimously by voice vote with Sen. Erickson voting by proxy.

00:03:12 **Motion/Vote:** Sen. Essmann moved that **HB 420 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote with Sen. Erickson voting by proxy. Sen. Erickson will carry HB 420.

Committee Business:

00:03:59 Sen. Gillan (Introduction of guests)

EXECUTIVE ACTION ON HB 630

00:04:54 **Motion:** Sen. Essmann moved that **HB 630 BE CONCURRED IN**.

00:05:30 **Motion:** Sen. Essmann moved that **HB 630 BE AMENDED. EXHIBIT(los68a02)**

Discussion:

00:06:11 Chairman Esp

00:07:11 Sen. Gillan

00:07:54 Chairman Esp

00:08:59 John MacDonald, City of Missoula

00:11:06 Sen. Barkus

00:12:00 John MacDonald, Missoula

00:14:10 Sen. Essmann

00:15:45 Sen. Barkus

00:15:52 Chairman Esp

00:16:40 Sen. Essmann

00:17:27 Sen. Gillan

00:17:36 Sen. Gallus left committee meeting

00:18:17 Chairman Esp

00:18:55 **Vote:** Motion carried 5-4 by roll call vote with Sens. Erickson, Gallus, Gillan, and Laslovich voting no with Sen. Gallus and Erickson voting by proxy.

00:19:38 **Motion/Vote:** Sen. Essmann moved that **HB 630 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote with Sens. Gallus and Erickson voting by proxy. Chairman Esp will carry HB 630.

EXECUTIVE ACTION ON HB 486

00:22:11 **Motion:** Sen. Essmann moved that **HB 486 BE CONCURRED IN**.

00:22:21 **Motion:** Sen. Essmann moved that **HB 486 BE AMENDED**. **EXHIBIT**(los68a03)

Discussion:

00:23:19 Chairman Esp
00:26:33 Sen. Gillan
00:26:46 Chairman Esp

00:26:58 **Vote:** Motion carried unanimously by voice vote with Sens. Gallus and Erickson voting by proxy. (NOTE: While Sen. Erickson's proxy vote was an "aye", Sen. Erickson requested at the March 30, 2009, Senate Local Government meeting that this vote be changed to a "no" vote. There was no objection from the committee to this request and the change did not affect the outcome.) Thus, the adjusted minutes will read:

00:26:58 **Vote:** Motion carried 8-1 by voice vote with Sen. Erickson voting no by proxy.

00:28:07 **Motion:** Sen. Essmann moved that **HB 486 BE AMENDED**. **EXHIBIT**(los68a04)

Discussion:

00:28:36 Chairman Esp
00:29:17 Sen. Tutvedt
00:29:35 Sen. Gillan

00:29:56 **Vote:** Motion failed 2-7 by voice vote with Sens. Esp and Sen. Essmann voting aye and Sens. Gallus and Erickson voting by proxy.

00:30:36 Sen. Gallus returned to committee meeting

00:30:55 **Motion/Vote:** Sen. Gillan moved that **HB 486 BE AMENDED.**
Motion carried unanimously by voice vote with Sen.
Erickson voting by proxy.

EXHIBIT(los68a05)

00:33:25 **Motion:** Sen. Gillan moved that **HB 486 BE AMENDED.**
EXHIBIT(los68a06)

Discussion:

00:33:53 Sen. Gillan
00:35:03 Chairman Esp
00:35:20 Leanne Heisel, Legislative Services Division (LSD)

00:35:32 **Vote:** Motion carried unanimously by voice vote with
Sen. Erickson voting by proxy.

00:36:28 **Motion:** Sen. Jackson moved that **HB 486 BE AMENDED.**
EXHIBIT(los68a07)

Discussion:

00:36:58 Sen. Jackson
00:37:15 Chairman Esp
00:37:39 Tim Davis, representing Montana Smart Growth Coalition
(MSGC)

00:38:24 **Vote:** Motion failed 1-8 by voice vote with Sen.
Jackson voting aye and Sen. Erickson voting by proxy.

00:38:58 **Motion:** Sen. Essmann moved that **HB 486 BE CONCURRED IN
AS AMENDED.**

00:40:35 **Motion:** Sen. Essmann moved that **HB 486 BE AMENDED WITH
A CONCEPTUAL AMENDMENT** to change the time period from 4
months to 6 months.

Discussion:

00:41:19 Sen. Gillan
00:42:03 Tim Davis, MSGC
00:43:05 Sen. Gillan
00:43:26 Sen. Essmann
00:43:56 Sen. Laslovich
00:44:15 Sen. Essmann
00:44:23 Sen. Laslovich
00:44:59 Sen. Gillan
00:45:20 Leanne Heisel, LSD
00:45:52 Sen. Gillan

00:46:27 **Vote:** Motion carried 7-2 by voice vote with Sens. Erickson and Gillan voting no with Sen. Erickson voting by proxy.

00:47:08 **Motion:** Sen. Essmann moved that **HB 486 BE CONCURRED IN AS AMENDED.**

Discussion:

00:47:20 Sen. Gillan
00:47:35 Chairman Esp

00:47:44 **Vote:** Motion carried unanimously by voice vote with Sen. Erickson voting by proxy. Sen. Esp will carry HB 486.

EXECUTIVE ACTION ON HB 608

00:48:51 **Motion:** Sen. Gallus moved that **HB 608 BE CONCURRED IN.**

00:49:00 **Motion:** Sen. Gallus moved that **HB 608 BE AMENDED.**
EXHIBIT(los68a08)

Discussion:

00:49:26 Leanne Heisel
00:49:52 Sen. Gallus
00:50:41 Sen. Essmann
00:51:29 Sen. Gallus

00:53:03 **Vote:** Motion carried unanimously by voice vote with Sen. Erickson voting by proxy.

00:53:21 **Motion:** Sen. Gallus moved that **HB 608 BE CONCURRED IN AS AMENDED.**

Discussion:

00:53:30 Sen. Tutvedt
00:53:50 Sen. Gallus
00:54:59 Sen. Tutvedt
00:55:21 Sen. Laslovich
00:56:15 Chairman Esp
00:58:00 Sen. Gallus
00:59:25 Sen. Essmann
01:00:38 Sen. Gallus
01:00:49 Chairman Esp

01:01:04 **Vote:** Motion failed 4-5 by roll call vote with Sens. Erickson, Gallus, Gillan, and Laslovich voting aye and Sen. Erickson voting by proxy. Without objection from the committee, Chairman Esp requested that the bill be tabled and the vote reversed.

Committee Business:

01:02:43 Chairman Esp

EXECUTIVE ACTION ON HB 522

01:03:32 **Motion:** Sen. Laslovich moved that **HB 522 BE CONCURRED IN.**

01:04:26 **Motion:** Sen. Gillan moved that **HB 522 BE AMENDED.**
EXHIBIT(los68a09)

Discussion:

01:04:54 Leanne Heisel

01:05:22 **Vote:** Motion carried 8-1 by voice vote with Sen. Gallus voting no with Sen. Erickson voting by proxy.

Discussion:

01:05:55 Chairman Esp

01:06:30 **Substitute Motion/Vote:** Sen. Tutvedt made a substitute motion that **HB 522 BE TABLED.** Substitute motion carried 6-3 by roll call vote with Sens. Erickson, Gallus, and Laslovich voting no and Sen. Erickson voting by proxy.

Committee Business:

01:07:44 Chairman Esp

ADJOURNMENT

Adjournment: 4:40 P.M.

Debra Polhemus, Secretary

dp

Additional Documents:

EXHIBIT ([los68aad.pdf](#))

MINUTES

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: Chairman John Esp, on March 27, 2009 at 3:00 P.M.,
in Room 405 Capitol

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Jeff Essmann, Vice Chairman (R)
Sen. Gregory D. Barkus (R)
Sen. Steven Gallus (D)
Sen. Kim Gillan (D)
Sen. Verdell Jackson (R)
Sen. Jesse Laslovich (D)
Sen. Bruce Tutvedt (R)

Members Excused: Sen. Ron Erickson (D)

Members Absent: None

Staff Present: Leanne Heisel, Legislative Branch
Debra Polhemus, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: NONE

Executive Action:

<u>TABLED:</u>	<u>DO CONCUR AS AMENDED:</u>
SB 522	SB 420
SB 608	SB 630
	SB 486

CONTINUED EXECUTIVE ACTION ON HB 420

(Previous executive action on March 25, 2009)

00:00:45 **Motion/Vote:** Sen. Essmann moved to **RECONSIDER PREVIOUS ACTION on SB 420**. Motion carried unanimously by voice vote of those present and voting.

00:01:23 **Motion:** Sen. Essmann moved that **HB 420 BE AMENDED. EXHIBIT(los68a01)**

Discussion:

00:02:29 Chairman Esp

00:02:52 **Vote:** Motion carried unanimously by voice vote with Sen. Erickson voting by proxy.

00:03:12 **Motion/Vote:** Sen. Essmann moved that **HB 420 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote with Sen. Erickson voting by proxy. Sen. Erickson will carry HB 420.

Committee Business:

00:03:59 Sen. Gillan (Introduction of guests)

EXECUTIVE ACTION ON HB 630

00:04:54 **Motion:** Sen. Essmann moved that **HB 630 BE CONCURRED IN**.

00:05:30 **Motion:** Sen. Essmann moved that **HB 630 BE AMENDED. EXHIBIT(los68a02)**

Discussion:

00:06:11 Chairman Esp

00:07:11 Sen. Gillan

00:07:54 Chairman Esp

00:08:59 John MacDonald, City of Missoula

00:11:06 Sen. Barkus

00:12:00 John MacDonald, Missoula

00:14:10 Sen. Essmann

00:15:45 Sen. Barkus

00:15:52 Chairman Esp

00:16:40 Sen. Essmann

00:17:27 Sen. Gillan

00:17:36 Sen. Gallus left committee meeting

00:18:17 Chairman Esp

00:18:55 **Vote:** Motion carried 5-4 by roll call vote with Sens. Erickson, Gallus, Gillan, and Laslovich voting no with Sen. Gallus and Erickson voting by proxy.

00:19:38 **Motion/Vote:** Sen. Essmann moved that **HB 630 BE CONCURRED IN AS AMENDED**. Motion carried unanimously by voice vote with Sens. Gallus and Erickson voting by proxy. Chairman Esp will carry HB 630.

EXECUTIVE ACTION ON HB 486

00:22:11 **Motion:** Sen. Essmann moved that **HB 486 BE CONCURRED IN**.

00:22:21 **Motion:** Sen. Essmann moved that **HB 486 BE AMENDED**.
EXHIBIT(los68a03)

Discussion:

00:23:19 Chairman Esp
00:26:33 Sen. Gillan
00:26:46 Chairman Esp

00:26:58 **Vote:** Motion carried unanimously by voice vote with Sens. Gallus and Erickson voting by proxy. (NOTE: While Sen. Erickson's proxy vote was an "aye", Sen. Erickson requested at the March 30, 2009, Senate Local Government meeting that this vote be changed to a "no" vote. There was no objection from the committee to this request and the change did not affect the outcome.) Thus, the adjusted minutes will read:

00:26:58 **Vote:** Motion carried 8-1 by voice vote with Sen. Erickson voting no by proxy.

00:28:07 **Motion:** Sen. Essmann moved that **HB 486 BE AMENDED**.
EXHIBIT(los68a04)

Discussion:

00:28:36 Chairman Esp
00:29:17 Sen. Tutvedt
00:29:35 Sen. Gillan

00:29:56 **Vote:** Motion failed 2-7 by voice vote with Sens. Esp and Sen. Essmann voting aye and Sens. Gallus and Erickson voting by proxy.

00:30:36 Sen. Gallus returned to committee meeting

00:30:55 **Motion/Vote:** Sen. Gillan moved that **HB 486 BE AMENDED.**
Motion carried unanimously by voice vote with Sen.
Erickson voting by proxy.

EXHIBIT(los68a05)

00:33:25 **Motion:** Sen. Gillan moved that **HB 486 BE AMENDED.**

EXHIBIT(los68a06)

Discussion:

00:33:53 Sen. Gillan

00:35:03 Chairman Esp

00:35:20 Leanne Heisel, Legislative Services Division (LSD)

00:35:32 **Vote:** Motion carried unanimously by voice vote with
Sen. Erickson voting by proxy.

00:36:28 **Motion:** Sen. Jackson moved that **HB 486 BE AMENDED.**

EXHIBIT(los68a07)

Discussion:

00:36:58 Sen. Jackson

00:37:15 Chairman Esp

00:37:39 Tim Davis, representing Montana Smart Growth Coalition
(MSGC)

00:38:24 **Vote:** Motion failed 1-8 by voice vote with Sen.
Jackson voting aye and Sen. Erickson voting by proxy.

00:38:58 **Motion:** Sen. Essmann moved that **HB 486 BE CONCURRED IN
AS AMENDED.**

00:40:35 **Motion:** Sen. Essmann moved that **HB 486 BE AMENDED WITH
A CONCEPTUAL AMENDMENT** to change the time period from 4
months to 6 months.

Discussion:

00:41:19 Sen. Gillan

00:42:03 Tim Davis, MSGC

00:43:05 Sen. Gillan

00:43:26 Sen. Essmann

00:43:56 Sen. Laslovich

00:44:15 Sen. Essmann

00:44:23 Sen. Laslovich

00:44:59 Sen. Gillan

00:45:20 Leanne Heisel, LSD

00:45:52 Sen. Gillan

00:46:27 **Vote:** Motion carried 7-2 by voice vote with Sens. Erickson and Gillan voting no with Sen. Erickson voting by proxy.

00:47:08 **Motion:** Sen. Essmann moved that **HB 486 BE CONCURRED IN AS AMENDED.**

Discussion:

00:47:20 Sen. Gillan
00:47:35 Chairman Esp

00:47:44 **Vote:** Motion carried unanimously by voice vote with Sen. Erickson voting by proxy. Sen. Esp will carry HB 486.

EXECUTIVE ACTION ON HB 608

00:48:51 **Motion:** Sen. Gallus moved that **HB 608 BE CONCURRED IN.**

00:49:00 **Motion:** Sen. Gallus moved that **HB 608 BE AMENDED.**
EXHIBIT(los68a08)

Discussion:

00:49:26 Leanne Heisel
00:49:52 Sen. Gallus
00:50:41 Sen. Essmann
00:51:29 Sen. Gallus

00:53:03 **Vote:** Motion carried unanimously by voice vote with Sen. Erickson voting by proxy.

00:53:21 **Motion:** Sen. Gallus moved that **HB 608 BE CONCURRED IN AS AMENDED.**

Discussion:

00:53:30 Sen. Tutvedt
00:53:50 Sen. Gallus
00:54:59 Sen. Tutvedt
00:55:21 Sen. Laslovich
00:56:15 Chairman Esp
00:58:00 Sen. Gallus
00:59:25 Sen. Essmann
01:00:38 Sen. Gallus
01:00:49 Chairman Esp

01:01:04 **Vote:** Motion failed 4-5 by roll call vote with Sens. Erickson, Gallus, Gillan, and Laslovich voting aye and Sen. Erickson voting by proxy. Without objection from the committee, Chairman Esp requested that the bill be tabled and the vote reversed.

Committee Business:

01:02:43 Chairman Esp

EXECUTIVE ACTION ON HB 522

01:03:32 **Motion:** Sen. Laslovich moved that **HB 522 BE CONCURRED IN.**

01:04:26 **Motion:** Sen. Gillan moved that **HB 522 BE AMENDED.**
EXHIBIT(los68a09)

Discussion:

01:04:54 Leanne Heisel

01:05:22 **Vote:** Motion carried 8-1 by voice vote with Sen. Gallus voting no with Sen. Erickson voting by proxy.

Discussion:

01:05:55 Chairman Esp

01:06:30 **Substitute Motion/Vote:** Sen. Tutvedt made a substitute motion that **HB 522 BE TABLED.** Substitute motion carried 6-3 by roll call vote with Sens. Erickson, Gallus, and Laslovich voting no and Sen. Erickson voting by proxy.

Committee Business:

01:07:44 Chairman Esp

ADJOURNMENT

Adjournment: 4:40 P.M.

Debra Polhemus, Secretary

dp

Additional Documents:

EXHIBIT ([los68aad.pdf](#))

Amendments to House Bill No. 486
3rd Reading Copy

Requested by Senator John Esp

For the Senate Local Government Committee

Prepared by Leanne Heisel
March 27, 2009 (1:42pm)

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 3.27.09
BILL NO. HB 486

1. Title, line 4.

Strike: "ANNEXATION AND SUBDIVISION"

Insert: "LAND USE"

Following: "LAWS;"

Insert: "CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS;
INCLUDING SAND AND GRAVEL RESOURCES AMONG THE ITEMS THAT
MUST BE MAPPED IN A GROWTH POLICY;"

2. Title, line 7.

Following: "CONDITION;"

Insert: "PROVIDING PENALTIES FOR VIOLATION OF CERTAIN ZONING
REGULATIONS; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN
COMPLIANCE WITH ZONING REGULATIONS BEFORE FILING A
COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING
AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING;"

3. Title, line 10.

Following: "SECURITY;"

Insert: "PROVIDING THAT A PARK DEDICATION MAY NOT BE REQUIRED FOR
A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD;"

4. Title, line 11.

Following: "70-23-301,"

Insert: "76-1-601,"

Following: "76-2-107,"

Insert: "76-2-113,"

Following: "76-2-205,"

Insert: "76-2-206, 76-2-210,"

5. Title, line 12.

Following: "76-3-507,"

Insert: "76-3-510,"

Following: "76-3-620,"

Insert: "76-3-621,"

6. Page 3.

Following: line 1

Insert: "Section 2. Section 76-1-601, MCA, is amended to read:
"76-1-601. Growth policy -- contents. (1) A growth policy

may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) sand and gravel resources; and

~~(viii)~~ (ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (3)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located

within the county's boundaries on matters related to the growth policy;

- (h) a statement explaining how the governing bodies will:
 - (i) define the criteria in 76-3-608(3)(a); and
 - (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a);

- (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and

- (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or not there is a need to:

- (i) delineate the wildland-urban interface; and

- (ii) adopt regulations requiring:

- (A) defensible space around structures;

- (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression activities; and

- (C) adequate water supply for fire protection.

- (4) A growth policy may:

- (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

- (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

- (c) establish an infrastructure plan that, at a minimum, includes:

- (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential, commercial, and industrial units over the next 20 years;

- (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate infrastructure planning with the county or counties where growth is likely to take place;

- (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

- (iv) for cities, a land use map showing where projected growth will be guided and at what densities within city boundaries;

- (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities showing where projected growth will be guided and at what densities;

- (vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve projected development and densities within infrastructure planning areas, including, whenever feasible, extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public facilities include but are not limited to

drinking water treatment and distribution facilities, sewer systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

(vii) a description of proposed land use management techniques and incentives that will be adopted to promote development within cities and in an infrastructure planning area, including land use management techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

{ Internal References to 76-1-601:

X76-1-410

X76-1-605

X76-3-210

X76-3-509

X76-3-616

X76-3-616 }"

Renumber: subsequent sections

7. Page 4.

Following: line 18

Insert: "NEW SECTION. **Section 6. Violations and penalties.** A violation of this part or of a resolution adopted pursuant to this part is a misdemeanor and is punishable by a fine of up to \$500 or by imprisonment in the county jail for a term not

exceeding 6 months, or both. The violation is an absolute liability offense as provided for in 45-2-104."

Insert: "Section 7. Section 76-2-113, MCA, is amended to read:

"76-2-113. **Enforcement of zoning provisions.** (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2)(b) restrain, correct, or abate a violation;

(3)(c) prevent the occupancy of a building, structure, or land; or

(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [section 6]."
{Internal References to 76-2-113: None.}"

Renumber: subsequent sections

8. Page 6, lines 21 and 22.

Strike: "must" on line 21 through "notice" on line 22

Following: "must" on line 22

Insert: ": (a) "

9. Page 6, line 23.

Strike: "(a) "

Insert: "(i) "

10. Page 6, line 24.

Strike: "(b) "

Insert: "(ii) "

11. Page 6, line 25.

Strike: "(c) "

Insert: "(iii) "

12. Page 6, line 26.

Strike: "(d) "

Insert: "(iv) "

13. Page 6, line 27.

Following: "recorder"

Insert: ";

(b) be posted not less than 45 days before the public

hearing in at least five public places within the proposed district; and

(c) be published once a week for 2 weeks in a newspaper of general circulation within the county"

14. Page 7.

Following: line 20

Insert: "Section 11. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) The Subject to subsection (3), the board of county commissioners may adopt establish an interim zoning map district or interim regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:

(a) the purpose of the interim zoning map district or interim regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county:

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding a hearing for the purpose of considering any of the following:

(A) a growth policy;

(B) zoning regulations; or

(C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or to zoning regulations pursuant to this part.

(2) An interim A resolution for an interim zoning district or interim regulation must be limited to 1 year from the date it becomes effective. The Subject to subsection (3)(c), the board of county commissioners may extend the interim resolution for 1 year, but not more than one extension may be made.

(3) The board of county commissioners shall observe the following procedures in the establishment of an interim zoning district or interim regulation:

(a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(i) the boundaries of the proposed district;

(ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim zoning district or interim regulation;

(iii) the general character of the proposed interim zoning district or interim regulation;

(iv) the time and place of the public hearing; and

(v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office of the county clerk and recorder.

(b) At the public hearing, the board of county commissioners

shall give the public an opportunity to be heard regarding the proposed establishment of an interim zoning district or interim regulation.

(c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim zoning district or interim regulation."

{ Internal References to 76-2-206:

X7-21-1003 X75-15-103 X76-2-209 }"

Insert: "Section 12. Section 76-2-210, MCA, is amended to read:

"76-2-210. Enforcement of zoning provisions. (1) ~~In case if~~ any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, ~~the proper authorities of adopted under this part,~~ the county, in addition to other remedies, may institute any appropriate action or proceedings to:

(a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to

(b) restrain, correct, or abate ~~such a~~ violation; to

(c) prevent the occupancy of ~~such the~~ building, structure, or land; or to

(d) prevent any illegal act, conduct, business, or use in or about ~~such near~~ the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under 76-2-211.

~~(2)(3)~~ (3) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions."

{ Internal References to 76-2-210: None. }

Renumber: subsequent sections

15. Page 14.

Following: line 18

Insert: "Section 18. Section 76-3-510, MCA, is amended to read:

"76-3-510. Payment for extension of capital facilities. (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for

which the payments were required."
{ Internal References to 76-3-510: None. }"
Renumber: subsequent sections

16. Page 18.

Following: line 18

Insert: "Section 23. Section 76-3-621, MCA, is amended to read:

"76-3-621. **Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(d) a subdivision in which only one additional parcel is created; or

(e) a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered

by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local governing body may, at its discretion, require a park dedication for a subsequent minor subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

{Internal References to 76-3-621:

x7-16-2324

x7-16-2324

x76-3-203

x76-3-509 }"

Renumber: subsequent sections

17. Page 19.

Following: line 13

Insert: "NEW SECTION. **Section 25. {standard} Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 6]."

Renumber: subsequent sections

- END -

Amendments to House Bill No. 486
3rd Reading Copy

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 4
DATE 3.27.09
BILL NO. HB 486

Requested by Senator John Esp

For the Senate Local Government Committee

Prepared by Leanne Heisel
March 27, 2009 (1:42pm)

1. Title, line 8.

Following: "APPLICATION;"

Insert: "PROVIDING CONSEQUENCES FOR FAILURE TO COMPLY WITH
ESTABLISHED SUBDIVISION REVIEW TIMELINES;"

2. Title, line 12.

Following: "76-3-507,"

Insert: "76-3-604,"

3. Page 14.

Following: line 18

Insert: "Section 18. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of subdivision application -- review for required elements and sufficiency of information. (1) (a) Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days or 90 working days if the proposed subdivision contains 50 or more lots, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) (a) If the governing body fails to comply with the time limits under subsection (4), the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

(b) The provisions of subsection (5)(a) do not apply if the review period is extended or suspended pursuant to subsection (4).

~~(5)(6)~~ If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

~~(6)(7)~~ (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels

containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

~~(7)~~(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

~~(8)~~(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

{ Internal References to 76-3-604:

x76-3-504	x76-3-504	x76-3-504	x76-3-601
x76-3-608	x76-3-609*	x76-3-609	x76-3-615
x76-3-620	x76-4-125	}"	

- END -

Amendments to House Bill No. 486
3rd Reading Copy

Requested by Senator Kim Gillan

For the Senate Local Government Committee

Prepared by Leanne Heisel
March 11, 2009 (11:18am)

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 5
DATE 3.27.09
BILL NO. HB486

1. Title, line 4.

Strike: "ANNEXATION"

Insert: "ZONING"

2. Page 8, line 30 through page 9, line 1.

Following: "subdivision," on page 8, line 30

Insert: "the"

Strike: "and" on page 8, line 30 through "lots" on page 9, line 1

3. Page 13, line 10.

Strike: "deny or conditionally"

Following: "approve"

Insert: ", conditionally approve, or deny"

4. Page 19.

Following: line 17

Insert: "NEW SECTION. Section 20. Applicability. [Sections 10, 16, and 17], concerning adoption of regulations and time references in the regulations, apply upon adoption of regulations under [section 10] or on May 1, 2010, whichever occurs first."

- END -

Amendments to House Bill No. 486
3rd Reading Copy

Requested by Senator Kim Gillan

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 6
DATE 3.27.09
BILL NO. HB 486

For the Senate Local Government Committee

Prepared by Leanne Heisel
March 12, 2009 (2:53pm)

1. Page 3, line 13.

Strike: "60"

Insert: "120"

2. Page 4, line 30.

Strike: "60"

Insert: "120"

- END -

Amendments to House Bill No. 486
3rd Reading Copy

Requested by Senator Verdell Jackson

For the Senate Local Government Committee

Prepared by Leanne Heisel
March 12, 2009 (2:53pm)

1. Page 3, line 13.

Strike: "60"

Insert: "120"

2. Page 4, line 27.

Strike: "density,"

3. Page 4, line 30.

Strike: "60"

Insert: "120"

- END -

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 7
DATE 3.27.09
BILL NO. HB486

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 486

Call to Order: Chairman Kim Gillan, on April 15, 2009 at 11:30
A.M., in Room 350 Capitol

ROLL CALL

Members Present:

Sen. Kim Gillan, Chairman (D)
Rep. Michele Reinhart, Chairman (D)
Rep. Bob Ebinger (D)
Sen. John Esp (R)
Rep. Gary MacLaren (R)
Sen. Bruce Tutvedt (R)
Rep. Gordon Vance (R)

Members Excused: None

Members Absent: None

Staff Present: Nadine Spencer, Committee Secretary
Leanne Heisel, Legislative Services

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Executive Action: HB 486

EXECUTIVE ACTION ON HB 486

00:00:28 Chairman Gillan
00:01:10 Leanne Heisel
00:03:30 Chairman Gillan

00:03:31 **Motion:** Rep. MacLaren moved **THE SENATE AMENDMENTS BE
ACCEPTED.**

EXHIBIT(ccs80hb0486a01)

Discussion:

00:03:47 Leanne Heisel
00:05:15 Chairman Gillan
00:05:19 Rep. MacLaren
00:05:43 Chairman Gillan
00:05:47 Sen. Esp
00:06:35 Chairman Gillan
00:06:42 Rep. Reinhart
00:07:45 Chairman Gillan
00:07:56 Rep. Reinhart
00:08:22 Sen. Esp
00:09:49 Rep. MacLaren
00:10:32 Sen. Tutvedt
00:12:01 Rep. Ebinger
00:12:29 Chairman Gillan
00:12:53 Rep. MacLaren
00:13:04 Sen. Esp
00:13:25 Chairman Gillan
00:13:58 Rep. Reinhart
00:14:26 Sen. Esp
00:15:18 Rep. Vance
00:15:38 Chairman Gillan
00:15:51 Rep. MacLaren
00:15:55 Leanne Heisel
00:16:39 Sen. Esp
00:17:01 Sen. Tutvedt
00:17:37 Chairman Gillan

00:17:55 recess
00:22:57 reconvene

00:23:01 Chairman Gillan

00:23:13 Rep. MacLaren withdrew his motion.

00:23:31 **Motion:** Sen. Tutvedt moved that (Senate Amendments to)
HB 486 BE AMENDED BY STRIKING SECTIONS 6, 7 AND 26 IN
THEIR ENTIRETY.

EXHIBIT(ccs80hb0486a02)

Discussion:

00:24:10 Leanne Heisel
00:24:21 Rep. Vance
00:24:40 Chairman Gillan
00:25:04 Sen. Esp
00:26:01 Rep. Reinhart
00:26:21 Sen. Esp
00:26:42 Leanne Heisel
00:26:55 Sen. Esp
00:27:12 Rep. MacLaren
00:27:17 Chairman Gillan
00:27:21 Sen. Esp
00:27:38 Sen. Tutvedt

00:27:45 **Vote:** Motion carried 6-1 by roll call vote with Sen.
Esp voting no.

00:28:43 **Motion:** Rep. MacLaren moved that (Senate Amendments
to) HB 486 (Exhibit 1) **BE AMENDED** and moved a
CONCEPTUAL AMENDMENT KEEPING SECTION 2, BUT CHANGING
THE APPLICABILITY REGARDING NEW GROWTH POLICIES OR
REVISIONS TO GROWTH POLICIES.

Discussion:

00:29:35 Chairman Gillan
00:29:53 Leanne Heisel
00:30:18 Chairman Gillan
00:30:24 Leanne Heisel

00:30:30 **Substitute Motion:** Sen. Esp moved to **SEGREGATE SECTION**
2 FROM THE REST OF THE (Senate) **AMENDMENT.**

Discussion:

00:30:47 Chairman Gillan
00:31:18 Rep. Reinhart
00:31:50 Sen. Esp
00:32:03 Chairman Gillan

00:32:23 **Vote:** Motion carried unanimously by roll call vote.

Discussion:

00:32:55 Chairman Gillan
00:33:21 Rep. Vance
00:33:30 Chairman Gillan
00:33:43 Leanne Heisel
00:33:52 Chairman Gillan
00:34:00 Rep. MacLaren
00:34:05 Leanne Heisel
00:34:20 Chairman Gillan
00:34:33 Leanne Heisel
00:35:03 Chairman Gillan
00:35:08 Sen. Tutvedt
00:35:14 Chairman Gillan
00:35:16 Leanne Heisel
00:36:13 Chairman Gillan
00:36:19 Sen. Esp
00:36:43 Leanne Heisel
00:37:03 Chairman Gillan
00:37:42 Rep. MacLaren
00:38:02 Chairman Gillan
00:38:23 Sen. Esp
00:39:01 Rep. MacLaren
00:39:09 Sen. Esp
00:39:24 Chairman Gillan

00:39:27 **Motion:** Sen. Esp moved to **SEGREGATE AMENDMENT 9 OF**
(Senate Amendments to) **HB 486** (Exhibit 1) **AND TO**
INCLUDE THE WORDS "ADJACENT TO PUBLIC RIGHTS OF WAY."

00:39:32 Chairman Gillan

00:40:24 **Vote:** Motion carried unanimously by roll call vote.

00:40:55 Chairman Gillan

00:41:15 **Motion:** Rep. MacLaren moved **AMENDMENTS 10, 11 AND 12**
OF (Senate Amendments to) **HB 486** (Exhibit 1).

Discussion:

00:41:30 Chairman Gillan
00:41:50 Leanne Heisel

00:42:07 **Substitute Motion:** Chairman Gillan moved a **SUBSTITUTE**
MOTION TO ADOPT ONLY AMENDMENT 10 (of the Senate
Amendments).

00:42:18 **Vote:** Motion carried unanimously by roll call vote.

00:42:50 **Motion:** Rep. MacLaren moved **AMENDMENTS 11 AND 12 OF**
(the Senate Amendments to) **HB 486** (Exhibit 1).

Discussion:

00:43:02 Chairman Gillan
00:43:10 Sen. Esp
00:43:54 Rep. Reinhart

00:45:46 **Substitute Motion:** Sen. Esp moved to **SEGREGATE**
AMENDMENT 11 AND AMEND SUBSECTION 2 OF SECTION 12 TO
READ "EXCEPT IN THE CASE OF IMMINENT DANGER TO PUBLIC
HEALTH, SAFETY AND WELFARE THE COUNTY SHALL
ATTEMPT...".

Discussion:

00:46:08 Rep. Reinhart
00:46:12 Sen. Esp
00:46:18 Rep. Reinhart
00:46:19 Sen. Esp
00:46:46 Chairman Gillan
00:47:06 Leanne Heisel
00:47:28 Rep. Reinhart
00:48:21 Chairman Gillan
00:49:36 Rep. Reinhart
00:50:20 Sen. Esp
00:51:27 Rep. Vance
00:51:48 Sen. Tutvedt
00:52:16 Chairman Gillan
00:52:23 Sen. Esp
00:52:32 Rep. Ebinger
00:52:47 Sen. Esp
00:53:02 Rep. Reinhart
00:53:19 Chairman Gillan
00:53:24 Sen. Esp
00:53:39 Chairman Gillan

Public Comment:

00:53:56 Linda Stoll, Montana Association of Planners (MAP)
00:55:12 Chairman Gillan
00:55:21 Linda Stoll
00:55:51 Chairman Gillan
00:55:58 Sen. Esp
00:56:06 Chairman Gillan
00:56:12 John MacDonald, City of Missoula
00:56:37 Chairman Gillan
00:56:46 Sen. Esp

00:57:29 Rep. Reinhart
00:58:01 Sen. Esp
00:58:23 Chairman Gillan
00:58:28 Sen. Esp
00:58:36 Leanne Heisel

00:58:50 **Substitute Motion:** Sen. Esp moved a **CONCEPTUAL AMENDMENT** (to the Senate Amendments) to **ADD ON LINE 14 IN SECTION 12 "FOR THE PURPOSES OF ENFORCING SUBSECTIONS (1) (A) THROUGH (1) (C) THE COUNTY SHALL ATTEMPT..."**.

Discussion:

00:58:58 Rep. Reinhart
00:59:15 Sen. Esp
00:59:39 Rep. Reinhart
01:00:10 Sen. Esp
01:00:19 Rep. Reinhart
01:00:27 Sen. Esp
01:01:06 Chairman Gillan
01:02:07 Rep. Reinhart
01:02:42 Chairman Gillan
01:03:14 Rick Hill, Montana Building Industry Association (MBIA)

01:03:21 **Vote:** Motion carried 6-1 by roll call vote with Rep. Reinhart voting no.

01:04:00 Chairman Gillan

01:04:32 **Motion/Vote:** Rep. MacLaren moved **AMENDMENT 12 OF** (the Senate Amendments to) **HB 486** (Exhibit 1). Motion failed (because majority of Senate members voted no) 4-3 by roll call vote with Sen. Esp, Sen. Tutvedt and Rep. Vance voting no.

01:05:44 **Motion:** Sen. Esp moved HB 486 **AS AMENDED** by the conference committee.

Discussion:

01:05:57 Leanne Heisel
01:06:12 Chairman Gillan
01:06:38 Sen. Esp
01:06:47 Rep. Reinhart
01:07:32 Sen. Esp
01:08:36 Chairman Gillan
01:08:51 Sen. Esp

01:08:55 Chairman Gillan

01:09:10 Tim Davis, Montana Smart Growth Coalition

01:09:21 Sen. Esp

01:09:41 Tim Davis

01:09:54 Chairman Gillan

01:10:31 **Vote:** Motion failed (because of 2-2 split vote by House members) 4-3 by roll call vote with Sen. Gillan, Rep. Reinhart and Rep. Ebinger voting no.

01:11:10 Sen. Esp

NOTE: After the meeting adjourned, Sen. Gillan scheduled a second meeting in lieu of not adopting the conference committee report.

ADJOURNMENT

Adjournment: 12:45 P.M.

Nadine Spencer, Secretary

ns

Additional Documents:

EXHIBIT ([ccs80hb0486aad.pdf](#))

Amendments to House Bill No. 486
Reference Copy

Requested by Representative Gary MacLaren

For the Senate Conference Committee

Prepared by Leanne Heisel
April 15, 2009 (9:29am)

****THIS AMENDMENT REMOVES SECTIONS:**

- 2 (GRAVEL IN THE GROWTH POLICY)
- 7 (REQUIRING COUNTY TO ATTEMPT TO OBTAIN VOLUNTARY COMPLIANCE WITH PART 1 ZONING REGULATIONS;
- 12 (REQUIRING COUNTY TO ATTEMPT TO OBTAIN VOLUNTARY COMPLIANCE WITH PART 2 ZONING REGULATIONS); AND
- 23 (NO PARK DEDICATION REQUIREMENT FOR A FIRST MINOR SUBDIVISION)

ALSO INCLUDES PUBLIC BUILDINGS AND RIGHTS OF WAY AMONG PLACES
PUBLIC NOTICE SHOULD BE POSTED FOR PART 2 ZONING**

1. Title, lines 5 and 6.

Strike: "INCLUDING" on line 5 through "POLICY;" on line 6

2. Title, lines 10 and 11.

Strike: "REQUIRING" on line 10 through "COMPLAINT;"

3. Title, lines 15 and 16.

Strike: "PROVIDING" on line 15 through "RECORD;" on line 16

4. Title, line 17.

Strike: "76-1-601,"

Strike: "76-2-113,"

5. Title, line 18.

Strike: "76-2-210,"

6. Title, line 19.

Strike: "76-3-621,"

7. Page 3, line 10 through page 6, line 17.

Strike: section 2 in its entirety

Renumber: subsequent sections

8. Page 8, line 11 through line 22.

Strike: section 7 in its entirety
Renumber: subsequent sections

9. Page 11, line 3.

Following: "PLACES"

Insert: ", including but not limited to public buildings and
public rights of way,"

10. Page 12, line 14.

Strike: "(3)(c)"

Insert: "(3)"

11. Page 13, line 3 through line 17.

Strike: section 12 in its entirety

Renumber: subsequent sections

12. Page 24, line 28 through page 27, line 10.

Strike: section 23 in its entirety

Renumber: subsequent sections

13. Page 28, line 15.

Strike: "15, 22, AND 24"

Insert: "14, 21, AND 22"

14. Page 28, line 17.

Strike: "15"

Insert: "14"

- END -

Amendments to House Bill No. 486
Reference Copy

Requested by Senator Bruce Tutvedt

For the Senate Conference Committee

Prepared by Leanne Heisel
April 15, 2009 (9:43am)

THIS AMENDMENT STRIKES SECTION 6 (PART 1 ZONING PENALTY) FROM THE BILL. SECTION 7 IS ALSO REMOVED SINCE IT IS TIED TO SECTION 6. SECTION 26 IS THE CODIFICATION INSTRUCTION FOR SECTION 6 AND IS NO LONGER NEEDED

1. Title, lines 9 and 10.

Strike: "PROVIDING" on line 9 through "REGULATIONS;" on line 10

2. Title, line 17.

Strike: "76-2-113,"

3. Page 8, line 6 through line 22.

Strike: sections 6 and 7 in their entirety

Renumber: subsequent sections

4. Page 28, line 9 through line 11.

Strike: section 26 in its entirety

Renumber: subsequent sections

5. Page 28, line 15.

Strike: "15, 22, AND 24"

Insert: "13, 20, AND 21"

6. Page 28, line 17.

Strike: "15"

Insert: "13"

- END -

MINUTES

MONTANA SENATE 61st LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE AMENDMENTS TO HOUSE BILL 486

Call to Order: Chairman Kim Gillan, on April 16, 2009 at 9:30
A.M., in Room 350 Capitol

ROLL CALL

Members Present:

Sen. Kim Gillan, Chairman (D)
Rep. Michele Reinhart, Chairman (D)
Rep. Bob Ebinger (D)
Rep. Gary MacLaren (R)
Sen. Bruce Tutvedt (R)
Rep. Gordon Vance (R)

Members Excused: Sen. John Esp (R)

Members Absent: None

Staff Present: Nadine Spencer, Committee Secretary
Leanne Heisel, Legislative Services

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Due to a committee break, several audio recordings were made to cover the entirety of the meeting. After the first part of the meeting and its audio recording, a minute of silence was added to the final recording to represent the committee break before the second audio portion begins. The second portion of the audio recording for the meeting begins at the minute's time stamp of 25:00.

Committee Business Summary:

Executive Action: HB 486

EXECUTIVE ACTION ON HB 486

00:00:00 Chairman Gillan

00:01:21 Leanne Heisel

EXHIBIT(ccs81hb0486a01)

00:01:51 Chairman Gillan

00:01:57 Leanne Heisel

00:02:14 Sen. Esp entered the hearing.

00:03:46 Chairman Gillan

00:04:05 **Motion:** Rep. MacLaren moved that **AMENDMENT 12** (of the Senate Amendments) **BE ADOPTED STRIKING SECTION 23 OF THE BILL.**

Discussion:

00:05:04 Leanne Heisel

00:05:27 Chairman Gillan

00:05:30 Leanne Heisel

00:05:44 Chairman Gillan

00:05:47 Leanne Heisel

00:05:49 Chairman Gillan

00:05:59 Rep. Ebinger

00:06:26 Rep. MacLaren

00:06:58 Chairman Gillan

00:07:06 Sen. Esp

00:07:23 Chairman Gillan

00:07:38 Leanne Heisel

00:07:48 Rep. Reinhart

00:08:09 Chairman Gillan

00:08:14 Rep. MacLaren

00:09:21 **Vote:** Motion failed (because a majority of the Senate members voted no)4-3 by roll call vote with Sen Esp, Sen. Tutvedt and Rep. Vance voting no

00:10:02 **Motion:** Rep. Ebinger moved a **CONCEPTUAL AMENDMENT THAT THE FIRST THREE UNITS OF THE MINOR SUBDIVISION BE EXEMPT FROM HAVING DEDICATION OF PARKLAND.**

Discussion:

00:10:35 Rep. Reinhart

00:10:55 Rep. Ebinger

00:11:05 Rep. MacLaren

00:11:14 Rep. Ebinger

00:11:24 Chairman Gillan

00:11:33 Rep. Ebinger
00:11:43 Leanne Heisel
00:12:28 Sen. Esp

00:12:44 **Motion:** Rep. Ebinger withdrew his motion.

00:12:52 **Motion:** Sen. Esp moved a **CONCEPTUAL AMENDMENT** that
**LINE 21 READ "A FIRST MINOR SUBDIVISION FROM A TRACT OF
RECORD AS DESCRIBED IN UNLESS THE SUBDIVISION IS IN THE
BOUNDARIES OF A MUNICIPALITY AND THE LOTS PROPOSED FOR
MULTI FAMILY DWELLINGS".**

00:13:30 Chairman Gillan
00:13:43 Leanne Heisel
00:13:52 Sen. Esp
00:14:14 Chairman Gillan
00:14:50 Myra Shults, Montana Association of Counties
00:16:39 Chairman Gillan
00:16:53 Leanne Heisel
00:17:43 Sen. Esp
00:18:04 Rep. Reinhart
00:18:10 Myra Shults
00:18:45 Leanne Heisel
00:19:07 Chairman Gillan
00:19:11 Myra Shults
00:19:46 Chairman Gillan
00:20:01 Rep. Reinhart
00:21:21 Chairman Gillan
00:21:42 Sen. Esp
00:22:15 Chairman Gillan

00:24:01 recess
00:25:00 reconvene

Committee Members: All Present

Staff Present: Nadine Spencer, Committee Secretary
Leanne Heisel, Legislative Services

00:25:11 Chairman Gillan

00:25:42 **Motion:** Rep. MacLaren moved that (the Senate
Amendments to) **HB 486 BE AMENDED.**

EXHIBIT(ccs81hb0486a02)

00:25:55 Leanne Heisel
00:27:28 Chairman Gillan
00:27:39 Rep. Reinhart
00:28:18 Chairman Gillan
00:28:24 Rep. MacLaren

00:28:35 **Vote:** Motion carried 6-1 by roll call vote with Rep.
Reinhart voting no.

00:29:01 **Motion:** Rep. MacLaren moved that (the Senate
amendments to) **HB 486 BE AMENDED.**

EXHIBIT(ccs81hb0486a03)

00:29:15 Leanne Heisel

00:29:42 **Vote:** Motion carried unanimously by roll call vote.

00:30:17 **Motion:** Sen. Esp moved that the **CONFERENCE COMMITTEE
REPORT HB 486 BE ADOPTED AS AMENDED.**

00:30:23 Leanne Heisel

Discussion:

00:30:56 Sen. Esp

00:31:07 Leanne Heisel

00:31:27 Rep. MacLaren

00:31:48 Chairman Gillan

00:31:55 **Vote:** Motion carried 6-1 by roll call vote with Rep.
Reinhart voting no.

ADJOURNMENT

Adjournment: 4:30 p.m.

Nadine Spencer, Secretary

ns

Additional Documents:

EXHIBIT ([ccs81hb0486aad.pdf](#))

Amendments to House Bill No. 486
Reference Copy

For the Senate Conference Committee

Prepared by Leanne Heisel
April 15, 2009 (4:05pm)

1. Title, lines 9 and 10.

Strike: "PROVIDING" on line 9 through "REGULATIONS;" on line 10

Following: "COMPLIANCE WITH" on line 10

Insert: "CERTAIN"

2. Title, line 17.

Strike: "76-2-113,"

3. Title, line 20.

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

4. Page 8, line 6 through line 22.

Strike: sections 6 and 7 in their entirety

Renumber: subsequent sections

5. Page 11, line 3.

Following: "PLACES"

Insert: ", including but not limited to public buildings and adjacent to public rights-of-way,"

6. Page 12, line 14.

Strike: "(3)(c)"

Insert: "(3)"

7. Page 13, line 14.

Strike: "The"

Insert: "For the purposes of enforcing subsections (1)(a) through (1)(c), the"

8. Page 28, line 9 through line 11.

Strike: section 26 in its entirety

Renumber: subsequent sections

9. Page 28, line 15.

Following: "APPLICABILITY."

Insert: "(1)"

Strike: "15, 22, AND 24"

Insert: "13, 20, and 22"

10. Page 28, line 17.

Strike: "15"

Insert: "13"

11. Page 28.

Following: line 17

Insert: "(2) [Section 2] applies upon adoption of a new growth policy or upon revision of an existing growth policy."

- END -

Amendments to House Bill No. 486
Reference Copy

EXHIBIT NO. 2
DATE 4-16-2009
BILL NO. HB 486

Requested by Representative Gary MacLaren

For the Senate Conference Committee

Prepared by Leanne Heisel
April 16, 2009 (12:57pm)

1. Page 25, line 21.

Following: "(e)"

Insert: "except as provided in subsection (8),"

2. Page 27, lines 1 through 3.

Strike: subsection (8) in its entirety

Insert: "(8) (a) A local governing body may, at its discretion,
require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-
609(3); or

(ii) a first minor subdivision from a tract of record as
described in 76-3-609(2) if:

(A) the subdivision plat indicates development of
condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other
multifamily housing; or

(C) any of the lots are located within the boundaries of a
municipality.

(b) A local governing body that chooses to require a park
dedication shall specify in regulations the circumstances under
which a park dedication will be required."

- END -

EXHIBIT NO. 3
DATE 4-16-2009
BILL NO. HB 486

Amendments to House Bill No. 486
Reference Copy

Requested by Representative Gary MacLaren

For the Senate Conference Committee

Prepared by Leanne Heisel
April 16, 2009 (12:58pm)

1. Page 28.

Following: line 17

Insert: "(2) [Section 23] applies upon revision of subdivision regulations or on December 31, 2010, whichever occurs first."

- END -